

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION

CADDO SYSTEMS, INC., \*  
511 TECHNOLOGIES, INC. \*  
\* June 8, 2022  
VS. \*  
\* CIVIL ACTION NO. W-20-CV-245  
\*  
MICROCHIP TECHNOLOGY \*  
INCORPORATED \*

BEFORE THE HONORABLE ALAN D ALBRIGHT  
TRIAL PROCEEDINGS  
Volume 3 of 5

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(Hearing begins.)

THE BAILIFF: All rise.

THE COURT: Good morning, everyone. You  
may be seated.

My understanding is there's an issue to  
take up.

Mr. Adams?

MR. ADAMS: Your Honor, I think we have  
one or several pieces of good news for you this  
morning, Your Honor. You maybe could use some good  
news on a -- is it Wednesday? I'm not even sure.

THE COURT: It's sort of like telling a  
prisoner who's being beaten --

(Laughter.)

THE COURT: -- good news. We're going to  
stop beating you in 15 minutes.

MR. ADAMS: There you go. And it's  
probably a very good analogy, Your Honor.

THE COURT: Thank you so much for  
stopping.

08:29 1 (Laughter.)

08:29 2 MR. ADAMS: So, Your Honor, Microchip has  
08:29 3 decided that it is not going to put on an invalidity  
08:29 4 case. And so in consideration of the jurors and  
08:29 5 Kristie, we are not going to read 17 substantially  
08:29 6 similar claims into the record a second time.

08:29 7 So the beating is stopping, Your Honor.  
08:29 8 At least with respect to 17 claims.

08:29 9 THE COURT: Listen. I feel badly now  
08:29 10 about joking because what you just said brought a  
08:29 11 little tear to my eye. And so it's -- which means  
08:29 12 we'll finish more quickly as well. So that's a good  
08:29 13 thing.

08:30 14 MR. ADAMS: That's correct, Your Honor.

08:30 15 And the second piece of good news, which  
08:30 16 your clerk may have passed on, is we don't have any  
08:30 17 evidentiary or demonstrative objections to address this  
08:30 18 morning.

08:30 19 There is an issue that just came up about  
08:30 20 an exhibit getting into evidence, and we're going to --  
08:30 21 it just came up. We're going to meet and confer about  
08:30 22 that. So possibly later in the day we'll try to iron  
08:30 23 that out.

08:30 24 But for now you can bring the jury in, as  
08:30 25 far as we're concerned, Your Honor.

08:30 1 MR. DEVLIN: So on -- I totally agree  
08:30 2 with everything we just heard.

08:30 3 On that piece of evidence coming in, we  
08:30 4 will be resting our case after Mr. Blok. And so we  
08:30 5 would just request that once we get that worked out,  
08:30 6 we'd be able to then --

08:30 7 THE COURT: Sure.

08:30 8 MR. DEVLIN: -- insert that evidence by  
08:30 9 motion.

08:30 10 There's another very small issue, Your  
08:30 11 Honor, but it -- one of those things that I feel  
08:30 12 obligated to raise.

08:30 13 This has to do with timekeeping. And  
08:30 14 there's going to be a video that they're going to play  
08:31 15 today of some deposition testimony. These videos are  
08:31 16 cut and kind of prepared a couple days before. And --

08:31 17 THE COURT: Let me interrupt you to say  
08:31 18 this.

08:31 19 MR. DEVLIN: Yeah.

08:31 20 THE COURT: My sense is if the  
08:31 21 defendant -- you all are dropping your invalidity case?  
08:31 22 Did I understand that correctly? Because I -- I don't  
08:31 23 want to say it out loud because I'm afraid I  
08:31 24 misunderstood you.

08:31 25 (Laughter.)

08:31 1 THE COURT: But if that's true, we are  
08:31 2 going to substantially shorten the trial, correct?

08:31 3 MR. ADAMS: Correct, Your Honor.

08:31 4 THE COURT: If we are going to -- with  
08:31 5 that being said, I'm -- you all should not be nearly as  
08:31 6 worried about the time.

08:31 7 If your concern, Mr. Devlin, is timing,  
08:31 8 you all have given me back probably four hours -- two  
08:31 9 hours minimum, maybe more, without an invalidity case.

08:31 10 So we'll be fine in getting the case  
08:31 11 finished.

08:31 12 MR. DEVLIN: Okay. Thank you, Your  
08:31 13 Honor.

08:31 14 THE COURT: And so...

08:31 15 I don't know if y'all had the good  
08:31 16 fortune to ever try anything in front of Paul Luckern,  
08:32 17 who was an ITC judge, who was a legend. He was a  
08:32 18 million years old when I was in front of him, and  
08:32 19 he'd been on -- and he was cantankerous. He would get  
08:32 20 angry at things, and he would give the lawyers a really  
08:32 21 hard time.

08:32 22 But then realizing he was on the record,  
08:32 23 he would finish after everything by saying, but I just  
08:32 24 want the record to be clear, you're all doing a great  
08:32 25 job. You're great lawyers. You're all doing a great

08:32 1 job, and I can't thank you enough.

08:32 2 And so he would be slamming the bench and  
08:32 3 screaming at us, but he would -- on the record it would  
08:32 4 say, but you're all doing a great job. And he was a  
08:32 5 phenomenally great -- I think I had three or four  
08:32 6 trials in front of him. He was just a phenomenal,  
08:32 7 phenomenal ITC judge.

08:32 8 Well, that's great news. I'll go out.  
08:32 9 If you -- are you all ready to go right now? Is your  
08:32 10 witness ready to go? And we're going to take him up on  
08:33 11 cross?

08:33 12 MR. DEVLIN: That's right, Your Honor.

08:33 13 MR. ADAMS: Yes, Your Honor. We're  
08:33 14 prepared.

08:33 15 THE COURT: Then I'm just going to walk  
08:33 16 back. If you'll bring him in, I'm just going to walk  
08:33 17 back, line the jury up, and we'll come right back in.

08:33 18 THE BAILIFF: All rise.

08:33 19 (Recess taken.)

08:35 20 THE BAILIFF: All rise.

08:35 21 THE COURT: Please remain standing for  
08:35 22 the jury.

08:35 23 (Jury entered the courtroom.)

08:35 24 THE COURT: Thank you. You may be  
08:35 25 seated.

08:35 1 Ladies and gentlemen of the jury, I don't  
08:35 2 think I thanked you all yesterday for coming back as  
08:35 3 robustly as I should have. So let me make up for that  
08:35 4 this morning. Welcome back. And I look forward to the  
08:35 5 third day of trial.

08:35 6 Counsel, if you wish to cross-examine  
08:35 7 this gentleman.

08:35 8 CROSS-EXAMINATION

08:35 9 BY MR. BREWER:

08:36 10 Q. Good morning, Mr. Blok.

08:36 11 A. Good morning.

08:36 12 Q. First question today: You're being paid \$520  
08:36 13 an hour for your testimony; is that right?

08:36 14 A. I believe that's right.

08:36 15 Q. And in your role as a damages expert, you  
08:36 16 assume that Microchip infringed these patents?

08:36 17 A. That's correct.

08:36 18 Q. But you have no competent opinion about  
08:36 19 whether they actually infringed the patents, right?

08:36 20 A. I'm not offering any opinion on infringement.

08:36 21 Q. If there is no infringement, there's no  
08:36 22 damages?

08:36 23 A. That's correct.

08:36 24 Q. The fact that Microchip later may call a  
08:36 25 witness, or a damages expert I should say, to rebut

08:36 1 your testimony does not mean that Microchip believes  
08:36 2 that it's infringed these patents, right?

08:36 3 A. I understand that.

08:36 4 Q. So your role as a damages expert is to attempt  
08:36 5 to determine a reasonable royalty; is that fair?

08:36 6 A. That's fair.

08:37 7 Q. And a reasonable royalty must be closely tied  
08:37 8 to the invention?

08:37 9 A. I would agree with that.

08:37 10 Q. When an accused product like microchip.com or  
08:37 11 the Forum website has both patented and unpatented  
08:37 12 features, Caddo only gets damages on the patented  
08:37 13 features, right?

08:37 14 A. It gets damages on the use made of the  
08:37 15 invention.

08:37 16 Q. And that's the patented features, right?

08:37 17 A. That's correct.

08:37 18 Q. And if a non-patented feature adds value to a  
08:37 19 product or a website, you have to remove that from your  
08:37 20 damages calculus?

08:37 21 A. You have to take that into consideration.

08:37 22 Q. When you say take that -- you -- is it  
08:37 23 included?

08:37 24 A. Well, every case is different. And so if  
08:37 25 you're talking about -- if there's a quantifiable



08:37 1 adjustment in every instance, then no, that's not  
08:37 2 correct.

08:37 3 Q. But generally speaking, you don't get damages  
08:37 4 on a non-patented feature; is that right?

08:37 5 A. I would say generally that's correct.

08:38 6 Q. And would you agree that it would be wrong to  
08:38 7 calculate a reasonable royalty based on infringement  
08:38 8 that's outside the United States?

08:38 9 A. I believe that's correct.

08:38 10 Q. That means that products sold outside the  
08:38 11 United States shouldn't be counted for damages?

08:38 12 A. In some instances. It depends on where the  
08:38 13 infringement takes place.

08:38 14 Q. And if the infringement is outside the United  
08:38 15 States, there's no damages?

08:38 16 A. If the infringement is outside of the U.S.,  
08:38 17 for my purposes that's correct.

08:38 18 Q. Okay. And it's the burden of the plaintiff to  
08:38 19 prove any damages it seeks by a reasonable certainty;  
08:38 20 is that right?

08:38 21 A. I believe that's correct.

08:38 22 Q. And a plaintiff can't get damages on  
08:38 23 speculative -- they can't get -- let me say that again.

08:38 24 A plaintiff can't get speculative damages,  
08:39 25 right?

08:39 1 A. For the most part, I would agree with that.

08:39 2 Q. Now, you talked a little yesterday with

08:39 3 Mr. Lennon about this hypothetical negotiation.

08:39 4 Do you recall that?

08:39 5 A. I do.

08:39 6 Q. And in this hypothetical negotiation, cards  
08:39 7 are up, everybody knows what's going on, everyone has  
08:39 8 full disclosure; is that accurate?

08:39 9 A. That's correct.

08:39 10 Q. And you consider at this hypothetical  
08:39 11 negotiation what a patent owner would accept to grant a  
08:39 12 license?

08:39 13 A. That's correct.

08:39 14 Q. And you also consider what Microchip would be  
08:39 15 willing to pay to get the license?

08:39 16 A. That's correct.

08:39 17 Q. And unlike traditional arm's length  
08:39 18 negotiation between, you know, unrelated parties  
08:39 19 outside of this case -- outside of a case -- you assume  
08:39 20 full disclosure in this hypothetical negotiation?

08:39 21 A. You assume that all parties have perfect  
08:39 22 information, is the way I put it.

08:40 23 Q. So full disclosure here would include  
08:40 24 knowledge of all of Caddo's licenses?

08:40 25 A. That's correct.

08:40 1 Q. And it would include the value that Caddo  
08:40 2 placed on its patents, right?

08:40 3 A. That's correct.

08:40 4 Q. So we're talking about these licenses.

08:40 5 Just to be clear, at a high level, a license  
08:40 6 gives permission for someone to use a patent; is that  
08:40 7 right?

08:40 8 A. I would agree with that.

08:40 9 Q. And what a patent owner is willing to accept  
08:40 10 in a license fee is a good indication of the value they  
08:40 11 place on that patent; is that right?

08:40 12 A. I would agree with that. In some instances.  
08:40 13 Yes.

08:40 14 Q. We've heard a few times in this case already,  
08:40 15 I think, that Caddo had already licensed these patents  
08:40 16 to several other companies before it sued Microchip,  
08:40 17 right?

08:40 18 A. In regards to settlements of a litigation,  
08:40 19 that's correct.

08:40 20 Q. And you went through those yesterday with  
08:41 21 Mr. Lennon?

08:41 22 A. I did.

08:41 23 Q. You talked about a license that Caddo gave to

08:41 24 

08:41 25 A. I did.

08:41 1 Q. A license that Caddo gave to [REDACTED]

08:41 2 A. That's correct.

08:41 3 Q. [REDACTED]

08:41 4 A license that Caddo gave to [REDACTED]

08:41 5 A. I did.

08:41 6 Q. "[REDACTED] however it's pronounced.

08:41 7 And then a license that Caddo gave to [REDACTED]

08:41 8 A. That's correct.

08:41 9 Q. And a license that Caddo gave to [REDACTED]

08:41 10 [REDACTED]

08:41 11 A. That's correct.

08:41 12 Q. And you concluded that only that [REDACTED]

08:41 13 [REDACTED] was relevant here, right?

08:41 14 A. Based on the information I reviewed, that's

08:41 15 correct.

08:41 16 Q. And so when you calculated your damages for

08:41 17 this case, you only used the [REDACTED] license;

08:41 18 is that fair?

08:41 19 A. To arrive at my royalty rate, that's correct.

08:41 20 Q. Now, part of the reason for that is that you

08:41 21 say that the [REDACTED] license is different from

08:41 22 those other licenses; is that right?

08:41 23 A. It's the only license in the record that I've

08:42 24 seen that gives any indication of a royalty rate.

08:42 25 Q. One of the reasons I think you gave yesterday

08:42 1 for distinguishing the [REDACTED] license and all  
08:42 2 those other licenses were these clauses denying  
08:42 3 liability.

08:42 4 Do you recall that?

08:42 5 A. I remember going through it. Not necessarily  
08:42 6 distinguishing between -- as far as the liability  
08:42 7 aspect, but we did go through several clauses.

08:42 8 Q. And you went through these clauses that said,  
08:42 9 for example, [REDACTED] denies liability, right?

08:42 10 A. That is correct.

08:42 11 Q. And the fact that, in your view, [REDACTED]  
08:42 12 [REDACTED] doesn't include that clause is relevant, right?

08:42 13 A. No. I believe that [REDACTED] also  
08:42 14 denied liability. The issue goes to the assumption of  
08:42 15 validity and infringement at the time of the  
08:42 16 hypothetical negotiation.

08:42 17 And so as I stated before, the plaintiff would  
08:42 18 be in a better bargaining position at the hypothetical  
08:43 19 negotiation than an assumption -- or in a license that  
08:43 20 was entered into where the parties are disputing  
08:43 21 liability.

08:43 22 Q. You didn't mention the no liability clause for  
08:43 23 the [REDACTED] license yesterday, did you?

08:43 24 A. I don't remember if we discussed that one or  
08:43 25 not.

08:43 1 Q. Let's take a look at the [REDACTED]  
08:43 2 license, because I think there's a few things about it  
08:43 3 you didn't tell the jury yesterday.

08:43 4 A. Okay.

08:43 5 MR. BREWER: Mr. Thompson, can you please  
08:43 6 pull up JTX-18, Page 1?

08:43 7 BY MR. BREWER:

08:43 8 Q. You see that there on the screen?

08:43 9 A. I do.

08:43 10 Q. This is the [REDACTED] license, isn't it?

08:43 11 A. Yes. It is.

08:43 12 Q. And in that third clause there -- you see that  
08:44 13 third "whereas" clause?

08:44 14 A. I only see the first two. Okay.

08:44 15 Q. Oh, sorry about that.

08:44 16 A. I see it.

08:44 17 Q. It says: Licensee has denied liability in the  
08:44 18 litigation?

08:44 19 A. That's correct.

08:44 20 Q. That's the same clause that was in the  
08:44 21 other --

08:44 22 A. That's one of the clauses that was in the  
08:44 23 others.

08:44 24 Q. Right. Right. Right.

08:44 25 Now, the other reason you gave that the

08:44 1 [REDACTED] license is different and more probative  
08:44 2 is that it contains a royalty rate, right?

08:44 3 A. It provides an indication of how the  
08:44 4 compensation was arrived at for this license.

08:44 5 Q. A royalty rate and the extent of use, I think  
08:44 6 is what you said?

08:44 7 A. Well, that's correct.

08:44 8 Q. And that, in your view, is damages in this  
08:44 9 case, isn't it?

08:44 10 A. Well, I think it's an important consideration  
08:44 11 when trying to determine the royalty rate, that you  
08:44 12 understand exactly how that lump-sum payment was  
08:45 13 arrived at.

08:45 14 Q. The royalty rate and the extent of use, so the  
08:45 15 revenues, that is damages for infringement, right?  
08:45 16 That's your opinion?

08:45 17 A. Well, I think that that is how the parties  
08:45 18 arrived at the amount under the [REDACTED]  
08:45 19 agreement. Yes.

08:45 20 Q. And then you took that and you applied it  
08:45 21 here, right?

08:45 22 A. I utilized the [REDACTED] percent. That's correct.

08:45 23 Q. That's really the linchpin of your analysis,  
08:45 24 isn't it, the [REDACTED] percent from this license times  
08:45 25 revenues?

08:45 1 A. I don't know if I would refer to it as the  
08:45 2 linchpin, but it's a component of the formula that I  
08:45 3 gave.

08:45 4 Q. There's another provision in here that I think  
08:45 5 you left out yesterday.

08:45 6 MR. BREWER: Mr. Thompson, can you please  
08:45 7 pull up Section 4.4 of this license?

08:45 8 BY MR. BREWER:

08:46 9 Q. Can you read that second sentence to yourself,  
08:46 10 please, starting with "the parties agree."

08:46 11 That sentence says that this agreement does  
08:46 12 not represent a payment of damages for infringement; is  
08:46 13 that right?

08:46 14 A. That's correct.

08:46 15 Q. It says the foregoing -- that there's "no  
08:46 16 representation made that the foregoing consideration  
08:46 17 represents a payment of damages for the infringement  
08:46 18 alleged in the litigation"?

08:46 19 A. I agree that that's what that says.

08:46 20 Q. And you're asking this jury to award Caddo  
08:46 21 \$30 million based on this agreement, and you left out  
08:46 22 yesterday the fact, clear as day, this says it does not  
08:47 23 represent the payment of damages for infringement?

08:47 24 A. Did we pull up this liability clause? No.

08:47 25 But this is a very different liability clause



08:47 1 than the ones that we identified yesterday.

08:47 2 Q. But it says it's not the payment for damages  
08:47 3 of infringement. And you're saying we should just take  
08:47 4 this license, this one license, ignore all the others,  
08:47 5 and use this to calculate a \$30 million royalty?

08:47 6 A. No. What I'm saying is, is that the best  
08:47 7 evidence that we have in our record of a royalty rate  
08:47 8 is the royalty rate that was agreed to by parties that  
08:47 9 are similarly situated.

08:47 10 Q. Which they said was not representative of  
08:47 11 payment of damages for infringement; is that right?

08:47 12 A. That's correct. But they did not say that  
08:47 13 it's not representative of a reasonable royalty like  
08:47 14 the other agreements do.

08:47 15 Q. Didn't you testify earlier that damages for  
08:47 16 infringement is a reasonable royalty?

08:47 17 A. I think that I testified that damages for  
08:48 18 infringement are a royalty.

08:48 19 Q. It's got to be reasonable, right?

08:48 20 A. That's correct.

08:48 21 MR. BREWER: Now, let's -- Mr. Thompson,  
08:48 22 please turn back to Section 3.1.

08:48 23 BY MR. BREWER:

08:48 24 Q. Because I think you left something else out  
08:48 25 important about this license.

08:48 1 You pointed out the [REDACTED] percent, but you didn't  
08:48 2 point out that [REDACTED] paid Caddo [REDACTED] for  
08:48 3 this license; is that right?

08:48 4 A. I would agree that they paid [REDACTED], but I  
08:48 5 believe that we showed this entire paragraph.

08:48 6 Q. But you didn't note that they paid [REDACTED] to  
08:48 7 use these patents, did you?

08:48 8 A. I don't remember if we specifically mentioned  
08:48 9 the [REDACTED].

08:48 10 Q. This license doesn't include any limitations  
08:48 11 on the use of these patents, does it?

08:49 12 A. It's limited to use by [REDACTED].

08:49 13 Q. Right. But [REDACTED] can use these  
08:49 14 patents as much as it pleases; is that fair?

08:49 15 A. Through the expiration date of the patent.  
08:49 16 That's correct.

08:49 17 Q. And they paid for that -- for those rights,  
08:49 18 they paid [REDACTED] right?

08:49 19 A. That's correct.

08:49 20 Q. Are you aware that [REDACTED]  
08:49 21 [REDACTED]

08:49 22 A. I am.

08:49 23 Q. It's fair to say that [REDACTED] is not a  
08:49 24 small company; is that right?

08:49 25 A. Well, it depends. If you include their

08:49 1 affiliates, I would agree they're not a small company.

08:49 2 Q. I mean, they bought WebMD for \$2.8 billion.

08:49 3 They must be a pretty big company, right?

08:49 4 A. Well, like I said, I think that there's a  
08:49 5 difference between [REDACTED], the company, and  
08:49 6 the affiliates that they purchased.

08:49 7 So if you're referring to [REDACTED] as a  
08:49 8 company, then they're relatively small.

08:49 9 Q. You're telling me a small company can afford  
08:49 10 to buy another company for \$2.8 billion?

08:49 11 A. Well, it depends on the affiliates, and that's  
08:50 12 what I'm saying. If you're including their affiliates,  
08:50 13 then I would agree with you.

08:50 14 Q. At the end of the day, [REDACTED]  
08:50 15 [REDACTED] for these patents, correct?

08:50 16 A. That's correct.

08:50 17 Q. And you say Microchip owes 30 million, right?

08:50 18 A. That's correct.

08:50 19 Q. None of Caddo's fees for the licenses you  
08:50 20 discussed yesterday come anywhere near 30 million, do  
08:50 21 they?

08:50 22 A. I would agree that they're not, you know,  
08:50 23 close to \$30 million.

08:50 24 Q. And I think you discussed four more licenses  
08:50 25 yesterday. We talked about them a minute ago: [REDACTED]

08:50 1 [REDACTED].

08:50 2 Does that sound right?

08:50 3 A. That's correct.

08:50 4 Q. And I didn't notice yesterday if you mentioned  
08:50 5 how much each of those paid for these patents.

08:50 6 A. I don't remember if we discussed that or not.

08:50 7 Q. Why don't we take a quick look?

08:51 8 MR. BREWER: Mr. Thompson, can you pull  
08:51 9 up Joint Exhibit 17, please?

08:51 10 And turn to Section -- well, let's look  
08:51 11 at the first page.

08:51 12 BY MR. BREWER:

08:51 13 Q. This is the [REDACTED] license, isn't it? See in that  
08:51 14 first paragraph?

08:51 15 A. That's correct.

08:51 16 MR. BREWER: Can you turn to Section 3.1,  
08:51 17 please?

08:51 18 BY MR. BREWER:

08:51 19 Q. The amount of payment there is [REDACTED]; is  
08:51 20 that right?

08:51 21 A. I see that.

08:51 22 Q. So [REDACTED] for these patents?

08:51 23 A. That's correct. In the settlement.

08:51 24 MR. BREWER: Can we please turn to  
08:51 25 JTX-15, please?

08:51 1 BY MR. BREWER:

08:51 2 Q. Now, this is the [REDACTED] license, correct?

08:51 3 A. That's correct.

08:51 4 MR. BREWER: Section 3.1, please.

08:51 5 BY MR. BREWER:

08:51 6 Q. Amount of payment, [REDACTED]

08:52 7 Does that sound right?

08:52 8 A. That's correct.

08:52 9 MR. BREWER: JTX-16, please.

08:52 10 BY MR. BREWER:

08:52 11 Q. This is the [REDACTED] [REDACTED]

08:52 12 [REDACTED], right?

08:52 13 A. Yes. It is.

08:52 14 MR. BREWER: Section 3.1, please.

08:52 15 BY MR. BREWER:

08:52 16 Q. Amount of payment, [REDACTED], correct?

08:52 17 A. That's correct.

08:52 18 MR. BREWER: JTX-21, please.

08:52 19 BY MR. BREWER:

08:52 20 Q. This is the [REDACTED] license.

08:52 21 Does that look right?

08:52 22 A. Yes. It does.

08:52 23 MR. BREWER: Now, can we turn to Section  
08:52 24 1.1, please?

08:52 25 BY MR. BREWER:

08:52 1 Q. Payment [REDACTED] correct?

08:52 2 A. That's correct.

08:52 3 Q. We'll turn back to the [REDACTED] license in a  
08:53 4 minute, but that's, what, [REDACTED] less than the  
08:53 5 30 million that you say that Caddo owes -- that  
08:53 6 Microchip owes Caddo?

08:53 7 A. Approximately.

08:53 8 Q. So what we have here is a record of Caddo  
08:53 9 agreeing to license its patents in the real world for  
08:53 10 much less than you say Caddo -- Microchip owes Caddo in  
08:53 11 this case, correct?

08:53 12 A. In the settlement of litigation, I would agree  
08:53 13 with that.

08:53 14 Q. I don't want to make you do the math, but if  
08:53 15 you were to add up all those licenses, [REDACTED]

08:53 16

08:53 17

08:53 18

08:53 19

08:53 20

08:53 21

08:53 22

08:53 23 Q. For these patents?

08:54 24 A. That's correct.

08:54 25 Q. And Microchip owes \$30 million. That's your

08:54 1 opinion, right?

08:54 2 A. Based on the hypothetical negotiation, that's  
08:54 3 correct.

08:54 4 Q. Let's talk about the idea of apportionment.  
08:54 5 You mentioned that in your report, but I don't think  
08:54 6 you used that word yesterday. Apportionment means  
08:54 7 really that in the hypothetical negotiation you have to  
08:54 8 figure out what the patent adds and discard everything  
08:54 9 else, right?

08:54 10 A. And I believe we talked about it in the form  
08:54 11 of incremental value yesterday.

08:54 12 Q. Sure. And you'd agree that it's particularly  
08:54 13 important to do this apportionment when the patents  
08:54 14 relate to one of many features incorporated into a  
08:54 15 website?

08:54 16 A. All cases are different, but I do believe  
08:55 17 apportionment is important.

08:55 18 Q. Particularly where the patents relate to only  
08:55 19 one of many features on a website?

08:55 20 A. I would agree that apportionment is important.

08:55 21 Q. And the contribution of the patents, Caddo's  
08:55 22 patents, has to be considered relative to all the other  
08:55 23 features and all the other functionalities provided by  
08:55 24 Microchip, right?

08:55 25 A. They should be focused on the incremental

08:55 1 value provided by the patents.

08:55 2 Q. Are you agreeing with what I was saying? I'm  
08:55 3 not sure.

08:55 4 A. Yes. But the way I discussed it yesterday was  
08:55 5 based upon the incremental value.

08:55 6 Q. Fair.

08:55 7 So is it fair to say that your analysis must  
08:55 8 only consider the benefits from the patents?

08:55 9 A. The benefits provided by the patents, yes. I  
08:55 10 would agree.

08:55 11 Q. Now, no one in this case is claiming that the  
08:56 12 patents are used in making Microchip's products, are  
08:56 13 they?

08:56 14 A. I would agree with that.

08:56 15 Q. And your royalty analysis is based on the sale  
08:56 16 of Microchip's products, correct?

08:56 17 A. It's based upon the use made of the website  
08:56 18 and the sale of its products.

08:56 19 Q. But you don't have any damages based on the  
08:56 20 use of a website. You have damages based on the sale  
08:56 21 of products, correct?

08:56 22 A. That's the ultimate result of the use of the  
08:56 23 website, based upon my understanding of the benefits.

08:56 24 Q. You'd agree that you can use the Microchip  
08:56 25 website without buying anything, correct?



08:56 1 A. I would agree with that.

08:56 2 Q. And you'd agree that there's a lot that goes  
08:56 3 into making a semiconductor, wouldn't you?

08:56 4 A. I would agree with that.

08:56 5 Q. And that's what Microchip makes, right?

08:56 6 A. Amongst other products, but --

08:56 7 Q. Yeah. Amongst other products. That's right.

08:57 8 A. -- generally.

08:57 9 Q. So you'd agree that when you make a  
08:57 10 semiconductor, there's design costs, right?

08:57 11 A. I would agree.

08:57 12 Q. There's manufacturing costs?

08:57 13 A. I would agree.

08:57 14 Q. Research costs?

08:57 15 A. Yes.

08:57 16 Q. Distribution costs?

08:57 17 A. Yes.

08:57 18 Q. Marketing costs?

08:57 19 A. Yes.

08:57 20 Q. Administrative costs?

08:57 21 A. Yes.

08:57 22 Q. And Microchip wants to make a profit on its  
08:57 23 products, right?

08:57 24 A. Yes.

08:57 25 Q. They should make something, right?

08:57 1 A. That's correct.

08:57 2 Q. It's not charity.

08:57 3 And so a reasonable royalty needs to be  
08:57 4 focused on the incremental value the patents add.  
08:57 5 That's what you said?

08:57 6 A. That's correct.

08:57 7 Q. If a patent incorporates some technology  
08:57 8 that's licensed, you have to factor that out, right?

08:57 9 A. In some instances. Not all instances.

08:57 10 Q. Well, in the hypothetical negotiation, the  
08:58 11 party's not going to pay for something that's already  
08:58 12 licensed; is that right?

08:58 13 A. I would agree with that.

08:58 14 Q. You don't expect them to pay twice?

08:58 15 A. Again, every situation is different. So I  
08:58 16 wouldn't expect a company to pay twice for the same  
08:58 17 technology.

08:58 18 Q. You talked a little yesterday about foreign  
08:58 19 sales. And we talked a little earlier today too. It's  
08:58 20 your understanding that all the Microchip servers are  
08:58 21 in the United States?

08:58 22 A. That's my understanding.

08:58 23 Q. So it doesn't matter if any of those sales are  
08:58 24 to foreign customers for your analysis?

08:58 25 A. Again, it's my understanding that the active

08:58 1 infringement takes place in the U.S.

08:58 2 Q. But if you're wrong and, in fact, those  
08:59 3 Microchip servers are not in the United States, they're  
08:59 4 outside the United States, your opinion's wrong, isn't  
08:59 5 it?

08:59 6 A. My royalty base would change, but I wouldn't  
08:59 7 say my opinion is wrong.

08:59 8 Q. Your numbers would be wrong?

08:59 9 A. My numbers would have to change. The royalty  
08:59 10 base would have to change. But my opinion of a royalty  
08:59 11 rate in this matter would remain unchanged.

08:59 12 Q. But your numbers would be -- the numbers that  
08:59 13 you showed us yesterday, if you're wrong about where  
08:59 14 the servers are, those numbers are wrong. Those would  
08:59 15 not represent a reasonable royalty in this case?

08:59 16 A. I would agree that the total damages would  
08:59 17 change.

08:59 18 Q. Let's talk for a second about the Forum  
08:59 19 website. You understand the purpose of that Forum  
08:59 20 website is so that customers can talk to each other?

08:59 21 A. Amongst other things.

08:59 22 Q. The Forum website doesn't sell anything, does  
08:59 23 it?

08:59 24 A. I'm not sure if it does, directly or not.

09:00 25 Q. Do you know if you can purchase anything on

09:00 1 the Forum website?

09:00 2 A. The Forum -- I'm sorry. I thought you were  
09:00 3 saying foreign.

09:00 4 Q. I'm sorry.

09:00 5 A. Sorry. I don't believe that you can purchase  
09:00 6 on the Forum website.

09:00 7 Q. It's a discussion board, you'd say; is that  
09:00 8 fair?

09:00 9 A. That's correct. About Microchip products.

09:00 10 Q. And in your damages model, you've got this  
09:00 11 \$30 million, right?

09:00 12 A. That's correct.

09:00 13 Q. Only the Forum is accused from 2014 to 2018;  
09:00 14 is that right?

09:00 15 A. That's my understanding.

09:00 16 Q. So if you break down your 30 million, is it  
09:00 17 fair to say that about 17 million is attributable to  
09:00 18 the Forum during 2014 to 2018?

09:00 19 A. I don't know the exact number, but it would be  
09:00 20 approximately half.

09:00 21 Q. Okay. Let me ask you a few questions about  
09:00 22 noninfringing alternatives.

09:00 23 A noninfringing alternative is a, like,  
09:01 24 substitute technology that the accused infringer, at  
09:01 25 the hypothetical negotiation, could have used, and in

09:01 1 so doing would not have infringed, right?

09:01 2 A. And provide the same or similar benefits to  
09:01 3 that of the patents-in-suit. That's correct.

09:01 4 Q. And so the existence of a noninfringing  
09:01 5 alternative affects the willingness of the accused  
09:01 6 company to pay for a license, right?

09:01 7 A. I think that it's a factor that would be  
09:01 8 considered at the hypothetical negotiation.

09:01 9 Q. Right. And what this really means is that if  
09:01 10 the accused infringer can switch to some other  
09:01 11 alternative that doesn't infringe, they're not going to  
09:01 12 pay very much for these patents?

09:01 13 A. I'm not sure that you can generalize like  
09:01 14 that. It depends upon the availability of that  
09:01 15 alternative. It depends on the cost of that  
09:01 16 alternative. So there's a lot of factors that goes  
09:02 17 into that noninfringing alternative analysis.

09:02 18 Q. Sure. That's fair.

09:02 19 But if you've got an available alternative,  
09:02 20 say it's, you know, \$1,000 a year, and Microchip could  
09:02 21 switch to that, that would affect what they're going to  
09:02 22 be willing to pay, right?

09:02 23 A. I would agree with that.

09:02 24 Q. In determining damages, in your opinion, you  
09:02 25 assumed there were no noninfringing alternatives?

09:02 1 A. Based upon my conversations with Mr. Sherwood,  
09:02 2 I understand that there are no noninfringing  
09:02 3 alternatives that would be acceptable that would  
09:02 4 provide the same benefits.

09:02 5 Q. But you have no independent opinion?

09:02 6 A. I do not offer an independent opinion. That's  
09:02 7 correct.

09:02 8 Q. So you just relied on Mr. Sherwood?

09:02 9 A. That's correct.

09:02 10 Q. Okay. And your damages opinion would change  
09:02 11 if Mr. Sherwood's wrong, wouldn't it?

09:02 12 A. As I sit here today, I don't know if it would  
09:03 13 or not. Again, it depends upon the availability of  
09:03 14 those noninfringing alternatives and how much it would  
09:03 15 cost Microchip to switch to those alternatives.

09:03 16 Q. Right. But Mr. Sherwood told you that they  
09:03 17 don't exist, so you didn't -- that didn't go into your  
09:03 18 calculus?

09:03 19 A. That's correct.

09:03 20 Q. But if he's wrong and they do exist, your  
09:03 21 calculus isn't right?

09:03 22 A. Well, again, it may or may not be. I don't  
09:03 23 know. It depends upon --

09:03 24 Q. You don't know?

09:03 25 A. -- how much it costs to implement those

09:03 1 alternatives.

09:03 2 Q. You're aware that Mr. Tittel -- you haven't  
09:03 3 heard from -- the jury hasn't heard from him yet. But  
09:03 4 you're aware that, in this case, Mr. Tittel, who's  
09:03 5 Microchip's technical expert, disagrees with  
09:03 6 Mr. Sherwood about noninfringing alternatives?

09:03 7 A. I understand that.

09:03 8 Q. Do you recall that one of those noninfringing  
09:03 9 alternatives that Mr. Tittel opines about is the  
09:03 10 redesigned microchip.com website?

09:04 11 A. I believe that's correct.

09:04 12 Q. You were here for Mr. Sherwood's testimony  
09:04 13 yesterday?

09:04 14 A. Yes. I was.

09:04 15 Q. And you recall that he put up -- I'm sure  
09:04 16 everyone recalls -- a chart with two columns and some  
09:04 17 checkmarks?

09:04 18 A. I do.

09:04 19 Q. One of those columns was the Forum website,  
09:04 20 and one of those columns was the old website; is that  
09:04 21 right?

09:04 22 A. That's correct.

09:04 23 Q. He didn't have a column on there for the  
09:04 24 redesigned website, right?

09:04 25 A. Not that I remember.

09:04 1 Q. Let me turn back just for a moment to that  
09:04 2 timeline we were talking about. From 2014 to 2018,  
09:04 3 only the Forum website's accused, correct?

09:04 4 A. That's correct.

09:04 5 Q. And given the fact that you've told the jury  
09:04 6 that Microchip owes Caddo \$30 million, it's fair to say  
09:05 7 that you think that these patents are pretty valuable?

09:05 8 A. Based upon my understanding of the benefits  
09:05 9 provided by the patents-in-suit, that's correct.

09:05 10 Q. They provide a lot of benefits.

09:05 11 A. I'm sorry.

09:05 12 Q. They provide a lot of benefits. I'm sorry, I  
09:05 13 interrupted you.

09:05 14 A. Yes.

09:05 15 Q. You listed them out on your slide?

09:05 16 A. Yes.

09:05 17 Q. Microchip Direct. We talked about -- a little  
09:05 18 bit about that. Everyone's talked a little bit about  
09:05 19 that. That's the e-commerce website, correct?

09:05 20 A. I think that's the actual portal to check out.  
09:05 21 Yes.

09:05 22 Q. That's where you buy Microchip products?

09:05 23 A. That's where you actually complete a sale.  
09:05 24 That's correct.

09:05 25 Q. The Microchip Direct website has never been



09:05 1 accused; is that right?

09:05 2 A. That's my understanding.

09:05 3 Q. That doesn't have this Active Path; is that  
09:05 4 right?

09:05 5 A. That's my understanding.

09:05 6 Q. So Microchip had, in plaintiffs' view, this  
09:06 7 valuable technology back in 2014, correct?

09:06 8 A. That's correct.

09:06 9 Q. And they never put it on their e-commerce  
09:06 10 website. That's also correct?

09:06 11 A. Are you referring to Microchip Direct?

09:06 12 Q. Correct.

09:06 13 A. That's correct.

09:06 14 Q. We mentioned earlier that your \$30 million  
09:06 15 damages figure is about [REDACTED]

09:06 16 [REDACTED] -- the total of what Caddo's been paid for these  
09:06 17 patents from other companies; is that right?

09:06 18 A. I think you limited it to certain licenses  
09:06 19 that we've discussed today. I think that they've  
09:06 20 collected more than you've mentioned.

09:06 21 So I wouldn't say it's [REDACTED]

09:06 22 [REDACTED] [REDACTED] [REDACTED] that accurate?

09:06 23 A. Somewhere in there.

09:06 24 Q. And you agreed earlier that if you add up the  
09:07 25 licenses that you considered: [REDACTED]

09:07 1

09:07 2

09:07 3 A. That sounds about right.

09:07 4 Q. Your reasonable royalty is built on two key  
09:07 5 facts: 5 percent and the \$215,000 a day; is that fair?

09:07 6 A. That's correct.

09:07 7 Q. If the jury were to determine that your use of  
09:07 8 that \$215,000-a-day figure was unreliable, that would  
09:07 9 mean that your damages model is unreliable, right?

09:07 10 A. I think that the jury, if they ultimately  
09:07 11 decide that the royalty base is not correct, then they  
09:07 12 can adjust the royalty base.

09:07 13 Q. And the second fact is that 5 percent. That's  
09:08 14 the second part of your analysis, correct?

09:08 15 A. That's correct.

09:08 16 Q. If the jury determines that that 5 percent  
09:08 17 doesn't reflect the value of these patents, your  
09:08 18 damages model fails, doesn't it?

09:08 19 A. Again, if the jury decides that the royalty  
09:08 20 rate should be something different, then they have the  
09:08 21 ability to make that determination.

09:08 22 MR. BREWER: No further questions.

09:08 23 REDIRECT EXAMINATION

09:08 24 BY MR. LENNON:

09:08 25 Q. Good morning, Mr. Blok.

09:08 1 A. Good morning.

09:08 2 Q. I'm going to try and talk a little slower  
09:08 3 today. I apologize for the speed with which I spoke  
09:08 4 yesterday. I was a little nervous.

09:08 5 Where do you understand infringement to have  
09:08 6 occurred in this case?

09:08 7 A. It's my understanding that infringement occurs  
09:09 8 in the U.S.

09:09 9 Q. Okay. Is it your understanding that the web  
09:09 10 servers for the microchip.com website reside in the  
09:09 11 United States?

09:09 12 A. That's my understanding.

09:09 13 Q. Okay. And you recall the presentation that  
09:09 14 referenced the \$215,000, which I believe you just spoke  
09:09 15 to Microchip's counsel about. You recall that \$215,000  
09:09 16 number, right?

09:09 17 A. I do.

09:09 18 Q. Do you remember what currency symbol preceded  
09:09 19 that 215 number?

09:09 20 A. Dollar.

09:09 21 Q. Okay. Wasn't a foreign currency symbol?

09:09 22 A. That's correct.

09:09 23 Q. Okay. For all the licenses that you  
09:09 24 considered, do you have any idea of the extent of use  
09:09 25 that was made of the accused features, other than in

09:09 1 the [REDACTED] license?

09:09 2 A. No. And that's what we had discussed  
09:09 3 yesterday.

09:09 4 Q. Okay. And in the [REDACTED] license  
09:09 5 example, your understanding is that by specifying a  
09:10 6 royalty rate in that agreement, that it was indicating  
09:10 7 an incremental value, or what we've also now heard  
09:10 8 described as an apportionment, of the value of the  
09:10 9 accused technology relative to other nonaccused  
09:10 10 technology; is that right?

09:10 11 A. That's correct. Because that agreement was  
09:10 12 focused on the specific patents and the value provided  
09:10 13 to [REDACTED], which is similar to what is alleged  
09:10 14 for Microchip as well.

09:10 15 Q. Okay. And that -- so the percentages that are  
09:10 16 in that [REDACTED] agreement refer to that  
09:10 17 incremental value; is that right?

09:10 18 A. That's correct.

09:10 19 Q. Okay. Do you recall seeing in Mr. Jordan's  
09:10 20 report a reference to there being 120,000 customers for  
09:10 21 Microchip, roughly?

09:10 22 A. I do.

09:10 23 Q. Do you recall that Mr. Jordan's report  
09:10 24 referenced that there were tens of thousands of posts  
09:10 25 on the Forums page?

09:10 1 A. I do.

09:10 2 Q. Doesn't that indicate that the Forums pages  
09:10 3 get a robust use from their \$120,000 (sic) customer  
09:11 4 base?

09:11 5 A. I would say that that's evidence of robust  
09:11 6 use.

09:11 7 Q. You were asked just now about the redesigned  
09:11 8 website. And the statement, I believe, was that the  
09:11 9 redesigned website is alleged to be a noninfringing  
09:11 10 alternative, right?

09:11 11 Do you -- can you remind us what's the date at  
09:11 12 which, in the hypothetical negotiation, you're supposed  
09:11 13 to assess whether or not there are any available and  
09:11 14 acceptable noninfringing alternatives?

09:11 15 A. In March of 2014.

09:11 16 Q. Okay. There was also reference that the  
09:11 17 microchipdirect.com website might be a noninfringing  
09:11 18 alternative or doesn't include the accused features.

09:11 19 What's your understanding as to whether or not  
09:11 20 the microchip.com website has the same information  
09:11 21 that's on Microchip -- I'm sorry. Let me rephrase that  
09:11 22 question.

09:11 23 Is it your understanding that  
09:12 24 microchipdirect.com does not have the same amount of  
09:12 25 information, the same types of information about the

09:12 1 Microchip products as is on the microchip.com website?

09:12 2 A. That's correct. It's my understanding that  
09:12 3 the microchip.com website does not have the same  
09:12 4 information as Microchip Direct.

09:12 5 Q. I think I mentioned \$120,000 customer base. I  
09:12 6 think maybe you understood what I was getting at. It's  
09:12 7 120,000 customers, not \$120,000 worth of customers,  
09:12 8 right?

09:12 9 A. That's correct.

09:12 10 Q. Thank you for bearing with me on that  
09:12 11 clarification. For the record.

09:12 12 And so I believe part of this -- the Q&A that  
09:12 13 you just went through, there was a suggestion that  
09:12 14 maybe you've calculated the number improperly by  
09:12 15 relying on the \$215,000-a-day revenue number.

09:12 16 Do you recall that?

09:12 17 A. I do.

09:13 18 Q. Okay. I want to step through some of the  
09:13 19 things that we talked about yesterday in light of that  
09:13 20 supposition and your statements yesterday that you  
09:13 21 believe that your calculation was conservative.

09:13 22 Do you recall that?

09:13 23 A. I do.

09:13 24 Q. Okay. So there were two reasonable royalty  
09:13 25 rate percentages in the [REDACTED] agreement?

09:13 1 MR. LENNON: And, Mr. Gooden, could we  
09:13 2 pull up J-18?

09:13 3 I believe --

09:13 4 BY MR. LENNON:

09:13 5 Q. So this is the [REDACTED] agreement,  
09:13 6 right?

09:13 7 A. Yes. It is.

09:13 8 Q. All right.

09:13 9 MR. LENNON: And if we could look at the  
09:13 10 next page of this agreement. The amount of payment.

09:13 11 BY MR. LENNON:

09:13 12 Q. Can you just remind us what the two  
09:13 13 percentages are that are specified here?

09:13 14 A. Sure. The parties agreed to a royalty rate of

09:13 15 [REDACTED]

09:14 16 [REDACTED]

09:14 17 [REDACTED]

09:14 18 [REDACTED]; is that

09:14 19 right?

09:14 20 A. That's correct.

09:14 21 Q. And why did you do that?

09:14 22 A. Because it's conservative.

09:14 23 Q. Okay. Now, also I believe yesterday we talked  
09:14 24 about information that you received after you issued  
09:14 25 your report. And I believe --

09:14 1 MR. LENNON: If, Mr. Gooden, you could  
09:14 2 pull up DTX-467.

09:14 3 BY MR. LENNON:

09:14 4 Q. Do you recall looking at this document  
09:14 5 yesterday, Mr. Blok?

09:14 6 A. I do.

09:14 7 Q. Okay. And I offered that the total in here,  
09:14 8 of sales, was 315.9 million.

09:14 9 Do you recall that discussion yesterday?

09:14 10 A. That's correct. For the first column -- or  
09:15 11 the second column, microchip.com, source.

09:15 12 Q. And based on knowing how many days that would  
09:15 13 be covered by this period, 853 days, you would --  
09:15 14 figured out how much that would be per day?

09:15 15 A. It's approximately \$370,000 a day.

09:15 16 Q. And that -- in comparison to the \$215,000 a  
09:15 17 day, what does that tell you about your calculations?

09:15 18 A. That the \$215,000 a day is conservative.

09:15 19 Q. Thank you. So the --

09:15 20 MR. LENNON: I'm sorry to do this. Could  
09:15 21 you jump back to J-18 again real quick?

09:15 22 BY MR. LENNON:

09:15 23 Q. Now, you were just asked about the liability  
09:15 24 clause in here: Whereas, licensee has denied liability  
09:15 25 in the litigation.



09:15 1 So that's different than the context of this  
09:15 2 case where you're asked to assume that patents are  
09:16 3 valid and infringed, right?

09:16 4 A. That's correct.

09:16 5 Q. In the hypothetical negotiation. Okay.

09:16 6 So what does this mean for Caddo's bargaining  
09:16 7 position in the [REDACTED] agreement compared to  
09:16 8 what it would be in the hypothetical negotiation?

09:16 9 A. And this is what we were explaining yesterday.  
09:16 10 In the hypothetical negotiation, that assumes that the  
09:16 11 patents are valid and infringed. That puts the  
09:16 12 plaintiff or the licensor in a better position.

09:16 13 And so this would represent a conservative  
09:16 14 royalty rate, if there is an -- or if there's no  
09:16 15 assumption of liability.

09:16 16 Q. So, again, what does that mean for your  
09:16 17 calculation in this case?

09:16 18 A. That it would be conservative.

09:16 19 Q. Okay.

09:16 20 MR. LENNON: And, Mr. Gooden, if you  
09:16 21 could pull up the -- I believe it's the next one.  
09:16 22 Section 4.4 of this agreement.

09:16 23 BY MR. LENNON:

09:16 24 Q. So, again, this denial of liability, what does  
09:16 25 this mean to you in terms of assessing the [REDACTED]

09:17 1 [REDACTED] agreement compared to the hypothetical  
09:17 2 negotiation when you have a party who has denied  
09:17 3 liability, yet specified a reasonable royalty rate  
09:17 4 based on an extent of use?

09:17 5 A. Well, as I stated yesterday, all settlement  
09:17 6 agreements take into account litigation risks. And so  
09:17 7 having this type of clause is not uncommon in these  
09:17 8 types of settlement agreements. Which also means if  
09:17 9 you're relying on those agreements, then they're a  
09:17 10 conservative representation.

09:17 11 And if you have a royalty rate that the  
09:17 12 parties agree to, then that tells you the extent of use  
09:17 13 of -- that was considered by those parties at the time  
09:17 14 that they entered into the agreement.

09:17 15 Q. And if the jury gets to the damages part of  
09:17 16 this case, would they have assumed that the patents  
09:17 17 were valid and infringed in order to arrive at a  
09:18 18 damages number in this case?

09:18 19 A. Yes.

09:18 20 Q. And is that what you're doing here with your  
09:18 21 analysis?

09:18 22 A. That's correct.

09:18 23 Q. Okay.

09:18 24 MR. LENNON: Mr. Gooden, could we go back  
09:18 25 to Clause 3.1 of this agreement?

09:18 1 BY MR. LENNON:

09:18 2 Q. Inside here there's a reference after the

09:18 3 [REDACTED]

09:18 4 [REDACTED]

09:18 5 [REDACTED]

09:18 6 Do you see that?

09:18 7 A. I do.

09:18 8 Q. Do you have any recollection as to what the

09:18 9 allegation of use was in the litigation that's in

09:18 10 this -- contemplated by this agreement?

09:18 11 A. It's my understanding that the alleged use is

09:18 12 the same use that Microchip is alleged to have used the

09:18 13 patents-in-suit on their website to sell products.

09:18 14 Q. This isn't -- this isn't -- this lawsuit

09:18 15 though -- well, just to be clear on the record, you're

09:18 16 not saying that this license agreement relates to the

09:18 17 microchip.com website, right?

09:19 18 A. No. I'm not.

09:19 19 Q. You're saying it's a use of website

09:19 20 technology?

09:19 21 A. That's correct.

09:19 22 Q. Okay. Do you know which website?

09:19 23 A. I do not remember offhand.

09:19 24 Q. Okay. That's fine.

09:19 25 And then sticking with your points about your

09:19 1 conservative estimate here. When you were calculating  
09:19 2 your damages numbers, you were just looking at  
09:19 3 e-commerce revenues, not total revenue of Microchip; is  
09:19 4 that correct?

09:19 5 A. That's correct.

09:19 6 Q. Okay. Do you recall seeing in Mr. Jordan's  
09:19 7 report that the e-commerce revenues represented less  
09:19 8 than 10 percent of Microchip's total sales?

09:19 9 A. I believe that's correct. But I'm -- I don't  
09:19 10 remember if he was referring to U.S. sales or total  
09:19 11 e-commerce sales.

09:19 12 Q. Okay. Nonetheless, you would acknowledge that  
09:19 13 e-commerce sales is not the full universe of Microchip  
09:20 14 sales, right?

09:20 15 A. That's correct.

09:20 16 Q. And in fact, you can make use of the accused  
09:20 17 technology in this case without going to Microchip  
09:20 18 Direct and purchasing a product; is that correct?

09:20 19 A. That's correct.

09:20 20 Q. So, for example, an engineer wants to purchase  
09:20 21 something and they call their sales agent, purchasing  
09:20 22 agent. That's not covered in the e-commerce context,  
09:20 23 right?

09:20 24 A. That's correct.

09:20 25 Q. So that engineer could be using the

09:20 1 microchip.com website to find information about the  
09:20 2 product that they wanted to buy and then tell someone  
09:20 3 else to purchase the product, either through a sales  
09:20 4 rep over the phone or because they have a bulk  
09:20 5 contract, right? And that wouldn't be covered in your  
09:20 6 damages calculation, would it?

09:20 7 A. No. It would not.

09:21 8 Q. Even though that would be -- still be an  
09:21 9 infringing use, using the microchip.com website?

09:21 10 A. That's correct.

09:21 11 Q. Are you aware of any printed catalogs? Have  
09:21 12 you seen any printed catalogs or any other way to look  
09:21 13 up information about products of Microchip other than  
09:21 14 the website?

09:21 15 A. I have not seen any.

09:21 16 Q. Okay.

09:21 17 MR. LENNON: Your Honor, I have no  
09:21 18 further questions.

09:21 19 MR. BREWER: No further questions.

09:21 20 THE COURT: You may step down, sir.  
09:21 21 Thank you.

09:21 22 THE WITNESS: Thank you.

09:21 23 THE COURT: Could I have counsel up here  
09:21 24 for just a second, one counsel per side?

09:21 25 (Bench conference.)

09:21 1 THE COURT: So you're done?

09:22 2 MR. DEVLIN: We're going to rest.

09:22 3 THE COURT: I'd like to keep going. Can  
09:22 4 you -- Mr. Devlin, will you agree at our break we'll  
09:22 5 allow the defendants to make any motions they care to?

09:22 6 MR. DEVLIN: Of course. Yeah.

09:22 7 THE COURT: And I --

09:22 8 MR. DEVLIN: For the record, Your Honor,  
09:22 9 I think I mentioned this before, but just to get it on  
09:22 10 the record, we have an agreement that the willfulness  
09:22 11 case will be held open through Ms. Mahar. So there'll  
09:22 12 be no motion on that even at the break. And that's  
09:22 13 been agreed between the parties.

09:22 14 And then we mentioned that exhibit --

09:22 15 MR. JENSEN: Yeah. I think as long as we  
09:22 16 just put that on the record, you rest your  
09:22 17 case-in-chief except as to willfulness, that -- that's  
09:22 18 fine.

09:22 19 THE COURT: Right now --

20 (Simultaneous speakers.)

21 MR. JENSEN: Perfect. Yeah. We're in  
22 agreement.

23 MR. DEVLIN: So when I say we rest, Your  
24 Honor, it's with that proviso. I didn't want to say  
25 that in front of the jury.

09:22 1 Thank you.

09:22 2 THE COURT: And then is your first  
09:22 3 witness ready to go?

09:22 4 MR. JENSEN: Yeah.

09:22 5 THE COURT: That's what we're going to  
09:22 6 do.

09:22 7 MR. DEVLIN: All right. Thank you.

09:22 8 THE COURT: I'm going to ask you to call  
09:22 9 your next witness, and you can announce.

09:22 10 MR. DEVLIN: Great. Thank you.

09:22 11 (Bench conference concludes.)

09:23 12 THE COURT: Mr. Devlin, would you call  
09:23 13 your next witness?

09:23 14 MR. DEVLIN: Your Honor, plaintiff rests  
09:23 15 its case-in-chief. We do have a couple of exhibit  
09:23 16 issues, which we're happy to deal with on the break, if  
09:23 17 the Court will allow.

09:23 18 THE COURT: Let's do that.

09:23 19 MR. DEVLIN: Thank you, Your Honor.

09:23 20 THE COURT: Is the defendant ready to  
09:23 21 call a witness?

09:23 22 MR. JENSEN: The defense is ready, Your  
09:23 23 Honor. We call Ms. Nanci Mahar as our first witness.

09:23 24 (The witness was sworn.)

09:23 25 DIRECT EXAMINATION

09:23 1 BY MR. JENSEN:

09:24 2 Q. Good morning, Ms. Mahar.

09:24 3 A. Good morning. Is this volume okay?

09:24 4 Thank you.

09:24 5 Q. I got the head nod, so I believe so.

09:24 6 Could you please state and spell your name?

09:24 7 A. Nanci Mahar. N-a-n-c-i M-a-h-a-r.

09:24 8 Q. Have you ever testified in court before,  
09:24 9 Ms. Mahar?

09:24 10 A. No.

09:24 11 Q. Are you nervous at all?

09:24 12 A. A little bit.

09:24 13 Q. Ms. Mahar, where do you work?

09:24 14 A. Microchip Technology.

09:24 15 Q. How long have you worked there?

09:24 16 A. Since 2000.

09:24 17 Q. And what is your current title?

09:25 18 A. Senior marketing manager of the web team.

09:25 19 Q. And what office -- or maybe I should say,  
09:25 20 pre-coronavirus, what office did you work out of?

09:25 21 A. Chandler, Arizona.

09:25 22 Q. Is that where Microchip is headquartered?

09:25 23 A. Yes. It is.

09:25 24 Q. So I'd like to learn a little bit more about  
09:25 25 you, but before we do that, I want to ask some



09:25 1 questions about Microchip as a company, all right?

09:25 2 When was Microchip founded?

09:25 3 A. I believe Steve Sanghi, the former CEO,  
09:25 4 started it up in the late 1980s with a couple other  
09:25 5 guys and built it up from there.

09:25 6 Q. Approximately how many people work in the  
09:25 7 Chandler headquarters that you mentioned?

09:25 8 A. About 5,000.

09:25 9 Q. And company-wide, roughly, you know, how many  
09:25 10 employees are there?

09:25 11 A. Yeah. We've grown to almost 20,000.

09:25 12 Q. Does Microchip have a design center located in  
09:25 13 Austin?

09:25 14 A. Yes. We do. I believe there's one or 200  
09:25 15 people there.

09:25 16 Q. What type of individuals work there, or what  
09:26 17 type of work is done there?

09:26 18 A. Yeah. Engineering primarily.

09:26 19 Q. On that topic, what is Microchip's line of  
09:26 20 business? What is it that you guys do?

09:26 21 A. Semiconductors. We make the little chips.

09:26 22 Q. At a high level -- I think this was touched on  
09:26 23 just a few minutes ago with Mr. Blok, but at a high  
09:26 24 level, what goes into developing and manufacturing the  
09:26 25 semiconductor products that Microchip makes?

09:26 1 A. So there's a lot of research and development.  
09:26 2 We have a lot of engineering that goes into it, as you  
09:26 3 might expect. There's a lot of fabrication and  
09:26 4 testing. And, of course, there's marketing and  
09:26 5 business administration, overhead, things like that.

09:26 6 Q. What sorts of applications are Microchip's  
09:26 7 products used in?

09:26 8 A. Yeah. We're in Keurig®. Probably you guys  
09:26 9 use that, right? Dyson vacuum, Maytag®, GE  
09:27 10 refrigerators, for example, Genie garage door openers,  
09:27 11 that kind of stuff.

09:27 12 Q. Is Microchip a website company?

09:27 13 A. No.

09:27 14 Q. Is Microchip in the business of designing and  
09:27 15 developing websites?

09:27 16 A. No.

09:27 17 Q. But Microchip has some websites, correct, as  
09:27 18 we've heard?

09:27 19 A. Yes. Yes. Everybody does.

09:27 20 Q. I think my grandmother launched her blog, so  
09:27 21 you can subscribe.

09:27 22 Would it be fair to say that the Microchip  
09:27 23 websites that we've been discussing are in service of  
09:27 24 Microchip's broader semiconductor business?

09:27 25 A. Yes.

09:27 1 Q. Okay. So you're not a company like Microsoft,  
09:27 2 for example, that designs and develops software  
09:27 3 applications?

09:27 4 A. No. Huh-uh.

09:27 5 Q. What types of customers typically purchase  
09:27 6 Microchip products?

09:27 7 A. Other electronic companies, mostly  
09:27 8 business-to-business.

09:27 9 Q. Do those companies typically purchase just one  
09:27 10 or two microchips?

09:27 11 A. No. Actually we have large purchases of our  
09:28 12 products.

09:28 13 Q. Can you give me an example of a company or two  
09:28 14 that would be an example, kind of a representative  
09:28 15 example, of someone who purchases from Microchip in,  
09:28 16 let's say, I'll call it in bulk?

09:28 17 A. Yeah, yeah. So Honeywell would be one. NEC,  
09:28 18 those kind of big companies.

09:28 19 Q. Are there any automotive companies that  
09:28 20 purchase chips from Microchip?

09:28 21 A. Oh, yeah. And, you know, automotive is kind  
09:28 22 of an interesting industry because there's a long -- we  
09:28 23 call it a design in-time. It can take up to 18 months  
09:28 24 before our product gets put into one of their designs.  
09:28 25 And when they put them into a design, then it's for a

09:28 1 long-term contract like five years. So...

09:28 2 Q. So taking that example you gave of, you know,  
09:28 3 a car company, for example, that wants to put some  
09:28 4 of -- Microchip chips in their vehicle, would they  
09:28 5 typically just go to the website and place a \$5 million  
09:28 6 order?

09:28 7 A. Oh, no. They'd work with our field  
09:29 8 salespeople, or they'd work with a distributor.

09:29 9 Q. And why would they do that instead of just  
09:29 10 going to the website and buying -- placing a bulk  
09:29 11 order?

09:29 12 A. They'd want to negotiate price, obviously.  
09:29 13 But they also want to negotiate terms like delivery.

09:29 14 Q. Is that an issue today with the supply chain  
09:29 15 and the coronavirus?

09:29 16 A. Yes. We're part of the silicon chip shortage  
09:29 17 for the vehicles. So I apologize.

09:29 18 Q. But Microchip does sell products online, to be  
09:29 19 clear, correct?

09:29 20 A. Yes.

09:29 21 Q. Okay. And how are those online sales made?

09:29 22 A. Through Microchip Direct.

09:29 23 Q. Okay. And what is the URL for that website?

09:29 24 A. Microchipdirect.com.

09:29 25 Q. And is that a separate website from

09:29 1 microchip.com?

09:29 2 A. Yeah. It's completely separate. Separate  
09:29 3 code, separate developers, separate management,  
09:29 4 separate servers.

09:29 5 Q. So I have some more questions about the  
09:29 6 websites. We'll get into that.

09:30 7 But I'd like to turn back now to your  
09:30 8 background a little bit.

09:30 9 Oh, you know what? One more small line of  
09:30 10 questions I almost forgot.

09:30 11 How long have you been with Microchip?

09:30 12 A. Since 2000.

09:30 13 Q. Since 2000. How big was Microchip back in  
09:30 14 2000 when you joined?

09:30 15 A. Oh, I think worldwide we had 3,000 employees  
09:30 16 instead of the almost 20,000 we have now. So it's  
09:30 17 grown a lot.

09:30 18 Q. And since the 2014 time frame, because that's  
09:30 19 the relevant date in this case, how has Microchip  
09:30 20 grown, if at all, since that time?

09:30 21 A. Yeah. During that time we had a strategy of  
09:30 22 acquiring companies. So we would acquire a company,  
09:30 23 and then -- Microchip's the kind of company not to say  
09:30 24 that we bought you, so you're coming over with us. We  
09:30 25 say, you know, we're merging with you.

09:30 1 So we have an inclusive kind of language we  
09:30 2 use internally so that the people that are coming on  
09:30 3 from the other company really feel welcomed in our  
09:31 4 groups.

09:31 5 And so we had like -- as I recall, there were  
09:31 6 many, many acquisitions during that time frame.

09:31 7 Q. Could you mention maybe some of the, I don't  
09:31 8 know, larger ones? Or at least the ones that you  
09:31 9 recall?

09:31 10 A. Yeah. We had one that was called Supertex. I  
09:31 11 believe they did a lot of analog products which is --  
09:31 12 okay. So you have microcontrollers and you have  
09:31 13 analog, just another type of silicon chip.

09:31 14 And there were other acquisitions that were  
09:31 15 kind of smaller. IIS, they did some -- I believe some  
09:31 16 more analog products, maybe some power management.

09:31 17 There were larger acquisitions like Micrel,  
09:31 18 Atmel, Microsemi. And those took a lot longer to  
09:31 19 integrate, but they brought us complementary products  
09:31 20 to what we already offer.

09:31 21 Q. All right. Just at a high level, how do  
09:32 22 Microchip's revenues today compare with what they were  
09:32 23 in 2014, before, you know, these various acquisitions  
09:32 24 that you mentioned?

09:32 25 A. Yeah. They've almost tripled. It's like

09:32 1 three times. And I know that because I serve up the --  
09:32 2 when you're a public company, you have to file  
09:32 3 documents with the SEC about your earnings. And so we  
09:32 4 have these 10-Ks. So I went and looked at those 10-Ks.  
09:32 5 Just kind of as a normal course of business, I kind of  
09:32 6 keep track of things.

09:32 7 And yeah, we've tripled.

09:32 8 Q. And remind me, again, Ms. Mahar, what is your  
09:32 9 current title? Maybe I neglected to ask. If I did, I  
09:32 10 forgot. What is your title?

09:32 11 A. Senior marketing manager for the web team.

09:32 12 Q. And how long have you been in that particular  
09:32 13 role?

09:32 14 A. Since April of 2018.

09:32 15 Q. And I want to ask you about that role in a  
09:32 16 minute. But first let me get maybe kind of a thumbnail  
09:32 17 sketch of the positions you have held since joining the  
09:33 18 company. I think you said that was back in the year  
09:33 19 2000?

09:33 20 A. 2000.

09:33 21 Q. Okay. And have you been there ever since?  
09:33 22 Were there any gaps where you went somewhere else?

09:33 23 A. No. I've worked at Microchip the entire time.

09:33 24 Q. Okay. Why have you stayed around so long?

09:33 25 A. Well, a lot of it has to do with the culture.

09:33 1 The company's a really great place to work.

09:33 2 Q. And during that, I guess, you know, roughly  
09:33 3 22 years, what positions have you held? And I don't --  
09:33 4 if you were somewhere for a few months or something,  
09:33 5 just kind of bigger picture.

09:33 6 A. Yeah. Yeah. I started in promotions. That  
09:33 7 was my original bachelor's degree, was in marketing.  
09:33 8 So I started in promotions. And that led into making  
09:33 9 wire diagrams, which is really just putting block  
09:33 10 squares on a piece of paper and working with a  
09:33 11 developer.

09:33 12 And then I moved into the web development  
09:33 13 team. I was there until about 2012. And I ran  
09:33 14 Internet projects and -- with, you know -- over time I  
09:34 15 got to be on bigger and bigger projects, and I got to  
09:34 16 be known as somebody who would deliver on time with my  
09:34 17 projects. So I had a pretty good reputation.

09:34 18 And then I moved over to the SharePoint site,  
09:34 19 which is -- Microsoft SharePoint's another application  
09:34 20 that companies use. And I worked on that for a little  
09:34 21 bit. I really didn't like that technology.

09:34 22 So then I went over to the MarCom team. I  
09:34 23 write technical documents for them and made changes.

09:34 24 And then I came back to the web team.

09:34 25 Q. So at a high level, the first, I think it was



09:34 1 10 or 12 years you said, that was kind of a website  
09:34 2 role, some promotions-related stuff. There was a  
09:34 3 period of time where you were not working on  
09:34 4 website-related projects. And then rejoined, I think  
09:34 5 you said, in April of 2019?

09:34 6 A. 2019. Yes.

09:34 7 Q. 2019.

09:34 8 A. 2019. Thank you.

09:34 9 Q. Very good.

09:34 10 So you mentioned you were kind of working on a  
09:35 11 website or part of a website team in those -- that  
09:35 12 first decade or so. What website was that? Because  
09:35 13 we've talked about several different websites. What  
09:35 14 website were you involved with?

09:35 15 A. Microchip.com.

09:35 16 Q. Microchip.com. Okay.

09:35 17 When you kind of rejoined the web team in  
09:35 18 2019, how did that come about? Why did you come back?  
09:35 19 Did you apply for that position?

09:35 20 A. No. Actually, my current boss, Ross Ayotte,  
09:35 21 he approached me and asked me to come back. And they  
09:35 22 had this really big project to redesign the website and  
09:35 23 wouldn't I please take that on? And I did.

09:35 24 Q. In your role as, I'll just call it the website  
09:35 25 team lead, what are your primary responsibilities?

09:35 1 A. Yeah. I'm primarily responsible for the  
09:35 2 function, the usability, the uptime of the website.

09:35 3 Q. And I got the sense that there's a team of  
09:36 4 people that work with you or -- I don't want to say  
09:36 5 under you, but that are part of your team. How big is  
09:36 6 that team?

09:36 7 A. We started out at about 20, 22 people. And  
09:36 8 I've grown it to 34 people.

09:36 9 Q. And where are those team members located?

09:36 10 A. You know, we're really all over the world. We  
09:36 11 have a large group in Chandler where I work. And then  
09:36 12 we have another large group in India. And then there's  
09:36 13 some other people throughout the world, in the  
09:36 14 Philippines and Germany.

09:36 15 Q. Which reminds me, I meant to ask. Is the  
09:36 16 microchip.com website available worldwide?

09:36 17 A. Yes. Actually it is.

09:36 18 Q. Is there like a separate URL if you're, you  
09:36 19 know, in Germany or, you know, Spain?

09:36 20 A. No. Actually not at this time. Everything is  
09:36 21 in English. But we're working on a project to expand,  
09:36 22 to translate the website into other languages to make  
09:36 23 it easier for other people to read.

09:36 24 Q. Do you have primary responsibility for the  
09:37 25 microchipdirect.com website?

09:37 1 A. No.

09:37 2 Q. Do you work with people who are responsible  
09:37 3 for the Microchip Direct website?

09:37 4 A. Yes. They're my colleagues.

09:37 5 Q. And what -- kind of in your own words since  
09:37 6 you're with the company, what is the  
09:37 7 microchipdirect.com website?

09:37 8 A. It's our e-commerce portal. It's where people  
09:37 9 go and purchase product.

09:37 10 MR. JENSEN: Mr. Thompson, could you just  
09:37 11 pull up the microchipdirect.com website?

09:37 12 BY MR. JENSEN:

09:37 13 Q. And we're not going to spend much time on  
09:37 14 this, but I do want to ask you a couple of questions  
09:37 15 about it.

09:37 16 MR. JENSEN: And let's go to the  
09:37 17 microchipdirect.com website.

09:38 18 Okay. Looks like it's up here. All  
09:38 19 right. Very good.

09:38 20 BY MR. JENSEN:

09:38 21 Q. All right. Is this the microchipdirect.com  
09:38 22 website, Ms. Mahar?

09:38 23 A. Yes. It is.

09:38 24 Q. And this is where customers can come to buy  
09:38 25 Microchip products?

09:38 1 A. Yes.

09:38 2 Q. If the Microchip Direct website crashed or was  
09:38 3 offline for some reason, could customers purchase  
09:38 4 products on microchip.com?

09:38 5 A. No.

09:38 6 Q. Conversely, if microchip.com crashed and  
09:38 7 wasn't working, could customers still place an order on  
09:38 8 Microchip Direct?

09:38 9 A. Yes.

09:38 10 Q. Okay. And what do you see kind of at the top  
09:38 11 of the page, underneath the URL? And it has some text  
09:38 12 there. It says: What can we help you find today?

09:38 13 A. Yeah. That's the search field where you can  
09:38 14 type in a product name and search for a product.

09:38 15 Q. Okay.

09:38 16 MR. JENSEN: Mr. Thompson, could you type  
09:38 17 in --

09:38 18 BY MR. JENSEN:

09:38 19 Q. Or, Ms. Mahar, what's something that he could  
09:39 20 type in there just so we can see how that --

09:39 21 A. PIC10F200, it's P-I-C-1-0 --

09:39 22 Q. Okay. Just pause right there for a moment.  
09:39 23 So what are we looking at here? What  
09:39 24 happened?

09:39 25 A. So it's doing a look-ahead for products on the

09:39 1 website.

09:39 2 Q. Okay. Is that similar to functionality like  
09:39 3 on Google's website, that it'll try to, you know,  
09:39 4 predict or guess -- I don't want to say guess, but  
09:39 5 predict what you're looking for?

09:39 6 A. Yes.

09:39 7 Q. Okay. Very good.

09:39 8 And is that how customers can locate products  
09:39 9 on the purchasing website?

09:39 10 A. Yes.

09:39 11 Q. Or I should say one way, not the only way?

09:39 12 A. One way.

09:39 13 Q. One way. Okay.

09:39 14 And why is it that the search bar on this  
09:39 15 website is sort of front and center, right? It's the  
09:39 16 top -- it's the very first thing on the purchasing  
09:39 17 website.

09:39 18 A. Right. One of the things that we've learned  
09:39 19 over time, especially over the pandemic, is that search  
09:39 20 is very, very valuable.

09:39 21 And I don't know about you, but I go to  
09:39 22 Amazon -- or I use a search engine like Google, but I  
09:39 23 go to Amazon a lot, and I'll search to find a product  
09:40 24 and then I would purchase it, right? So...

09:40 25 MR. JENSEN: And, Mr. Thompson, you can

09:40 1 take that down.

09:40 2 BY MR. JENSEN:

09:40 3 Q. The first time I saw this, Ms. Mahar, it  
09:40 4 struck me as a little bit odd that there were kind of  
09:40 5 two different, you know, Microchip websites, right?

09:40 6 If I want to buy something from Apple, I might  
09:40 7 go to apple.com and buy something there.

09:40 8 So why is it -- why does Microchip have these  
09:40 9 two distinct websites?

09:40 10 A. Right. So we consider our online sales  
09:40 11 another channel. It's kind of like our distribution  
09:40 12 channel. And we don't want to compete with our  
09:40 13 distributors on our main microchip.com website, so we  
09:40 14 have a separate website for purchasing.

09:40 15 Q. Do you know when the Microchip Direct website  
09:40 16 was kind of implemented, or when did it get put on the  
09:40 17 Internet?

09:40 18 A. Yeah. I believe it was back in 2005ish.

09:40 19 Q. Okay. But it certainly would have been there  
09:40 20 in 2014?

09:40 21 A. Yes. Absolutely.

09:40 22 Q. Okay. And do you have primary responsibility  
09:41 23 for the Forum website that we've heard about in this  
09:41 24 case?

09:41 25 A. No. I don't.

09:41 1 Q. Do you work with people who are responsible  
09:41 2 for the Forum website?

09:41 3 A. Yes.

09:41 4 Q. And in your own words, what is the Forum  
09:41 5 website?

09:41 6 A. It's a discussion platform. People can go  
09:41 7 there and talk about our products.

09:41 8 Q. And we'll come back and have some more  
09:41 9 questions later on about the Forum website, but I'd  
09:41 10 like to ask some questions about what's been referred  
09:41 11 to throughout the trial as the old website or the  
09:41 12 original website.

09:41 13 And you've been here the -- this whole week,  
09:41 14 the entire time?

09:41 15 A. Yes.

09:41 16 Q. Okay. What is the purpose of the  
09:41 17 microchip.com website?

09:41 18 A. It's informational, to share information about  
09:41 19 our products.

09:41 20 Q. Is the microchip.com website only available in  
09:41 21 the United States?

09:41 22 A. No. It's not.

09:41 23 Q. Is it available in Europe?

09:42 24 A. Yes.

09:42 25 Q. How about South America?

09:42 1 A. Yes.

09:42 2 Q. Mexico, Canada?

09:42 3 A. Yes. Yes.

09:42 4 Q. Okay. And perhaps there's, I don't know, some  
09:42 5 one-off countries where it's not, you know --

09:42 6 A. Yeah.

09:42 7 Q. -- available for political reasons or  
09:42 8 something. But in general, it's a worldwide website?

09:42 9 A. That's right.

09:42 10 Q. Okay. If someone in Europe, for example,  
09:42 11 visited microchip.com, would their request to load the  
09:42 12 website be serviced by a server in the United States or  
09:42 13 a server in Europe?

09:42 14 A. No. If we had everybody come back to the  
09:42 15 United States, it would take down the website. So we  
09:42 16 serve up our website international on servers all  
09:42 17 around the world.

09:42 18 We go -- you -- if you were in Taiwan or  
09:42 19 Norway, you would go to a server in that or near that  
09:42 20 country. It just makes the website load faster. And  
09:42 21 that was a big problem we had before.

09:42 22 Q. Do you work with any other vendors or  
09:42 23 companies to help provide these servers throughout the  
09:43 24 world?

09:43 25 A. Yeah. We have a third party that does that.



09:43 1 Q. Who is that third party?

09:43 2 A. Akamai.

09:43 3 Q. And do you have a sense of how many servers do  
09:43 4 they have? Is it one or two or...

09:43 5 A. No. I believe I read on their website that  
09:43 6 it's over 200,000 servers worldwide.

09:43 7 Q. And if somebody in Spain was loading the  
09:43 8 website, would it load faster or slower if that website  
09:43 9 used a server in Spain versus a server in the United  
09:43 10 States?

09:43 11 A. So if they went to a server in Spain, it would  
09:43 12 load very quickly. If they had to come back to the  
09:43 13 United States, there would be several paths, and it  
09:43 14 would take a lot longer to load the site if they came  
09:43 15 back to the U.S.

09:43 16 Q. Is that one reason why Microchip has  
09:43 17 servers -- I call them Microchip's, but Akamai on  
09:43 18 behalf of Microchip has servers located throughout the  
09:43 19 world?

09:43 20 A. Yes.

09:43 21 Q. It increases the page load speed?

09:43 22 A. Yes.

09:43 23 Q. Makes it faster?

09:43 24 A. Yes.

09:43 25 Q. Are you -- do you have an understanding of the

09:44 1 difference between kind of hosting the website or a  
09:44 2 server that hosts a website and what it would be to  
09:44 3 maintain a website?

09:44 4 A. Yes.

09:44 5 Q. Okay. Could you explain that, please?

09:44 6 A. Yeah. So we have servers in Chandler where we  
09:44 7 maintain our source code, and then we copy it out to  
09:44 8 Akamai's servers, and we host it out there so that it  
09:44 9 goes faster to the user.

09:44 10 Q. Okay. And the latter of those two things,  
09:44 11 where the code is maintained -- well, let me take a  
09:44 12 step back.

09:44 13 Microchip has some servers in the United  
09:44 14 States; is that correct?

09:44 15 A. Yeah. On the east coast, west coast.

09:44 16 Q. Okay. So somebody in the U.S. wanted to visit  
09:44 17 microchip.com, that page would be served up by a server  
09:44 18 in the U.S.?

09:44 19 A. Yeah.

09:44 20 Q. Okay. So you're not saying that we don't have  
09:44 21 servers in the U.S., correct?

09:44 22 A. Correct.

09:44 23 Q. You do?

09:44 24 A. Yes.

09:44 25 Q. But you also have servers outside of the U.S.

09:44 1 for other areas of the world?

09:44 2 A. Yes.

09:44 3 Q. Okay. You mentioned, I think, someone by the  
09:45 4 name -- and I may get the pronunciation off here, but  
09:45 5 Ross Ayotte?

09:45 6 A. Uh-huh.

09:45 7 Q. Is that correct?

09:45 8 A. Right.

09:45 9 Q. Okay. And he was the individual that  
09:45 10 recruited you to lead the redesign?

09:45 11 A. That's right.

09:45 12 Q. Okay. So I'd like to ask you some questions  
09:45 13 about the microchip.com website as it existed prior to  
09:45 14 the redesign.

09:45 15 A. Okay.

09:45 16 Q. And first off, what was the state of affairs  
09:45 17 of the microchip.com website in the fall of 2018?

09:45 18 A. Oh, it was in critical repair. The code was  
09:45 19 very fragile. When we tried to put new code on the  
09:45 20 site, the database would crash, meaning that the  
09:45 21 website would not render properly on the Internet.

09:45 22 The page load speed was, you know, at that  
09:45 23 time I believe it was about 12 seconds, you know, I  
09:45 24 mean, really slow to load a page before you see  
09:45 25 something. And the Internet industry believes that 2

09:46 1 to 3 seconds is the right amount of time to load a  
09:46 2 page.

09:46 3 So it was -- it was fragile. It was horrible  
09:46 4 to work on the system. And it was really challenging  
09:46 5 for our customers.

09:46 6 Q. Okay.

09:46 7 MR. JENSEN: Mr. Thompson, could you  
09:46 8 bring up Joint Exhibit 104, please?

09:46 9 BY MR. JENSEN:

09:46 10 Q. All right. Ms. Mahar, do you recognize this  
09:46 11 document?

09:46 12 A. Yes.

09:46 13 Q. What is it?

09:46 14 A. It's a presentation that the person that had  
09:46 15 my job before me, Grace Ramon -- she was my  
09:46 16 predecessor -- she created a presentation on why we  
09:46 17 needed to reengineer the website.

09:46 18 Q. And why did you have a copy of this document  
09:46 19 in your files?

09:46 20 A. Ms. Ramon left the company in the spring of  
09:47 21 2019, and we had a transition phase where she gave me  
09:47 22 her documents, and we kind of went over everything.

09:47 23 Q. Why did she prepare it?

09:47 24 A. She prepared it in order to request funds for  
09:47 25 redesigning the website from management.

09:47 1 Q. And I meant to ask one more question when we  
09:47 2 were talking about the worldwide operation of the  
09:47 3 website, which is: When, let's say, someone in Spain  
09:47 4 wants to visit the website, the person that's  
09:47 5 navigating that website would be in Spain?

09:47 6 A. Yeah.

09:47 7 Q. Okay.

09:47 8 A. Yeah.

09:47 9 Q. Very good.

09:47 10 Let's see.

09:47 11 MR. JENSEN: Mr. Thompson, could you turn  
09:47 12 to -- well, let me back up.

09:47 13 BY MR. JENSEN:

09:47 14 Q. Let me ask one other question. When was this  
09:47 15 presentation prepared, just kind of rough time frame?

09:47 16 A. I believe the fall of 2018.

09:47 17 Q. Okay.

09:47 18 MR. JENSEN: Could we go to Slide 14,  
09:47 19 Mr. Thompson?

09:47 20 BY MR. JENSEN:

09:48 21 Q. What is shown on this slide, Ms. Mahar?

09:48 22 A. It's showing the -- on the image on the left,  
09:48 23 it showed the existing website at the time, how fragile  
09:48 24 and crumbling the website was. Kind of depicts that  
09:48 25 there was a lot of work. And obviously, you can't

09:48 1 repair something that is that bad.

09:48 2 And then on the right side, it shows the  
09:48 3 website as we would want it to be, modern, sleek, fast,  
09:48 4 reliable, stable, all of those good things.

09:48 5 Q. How much time would be required to build a new  
09:48 6 website from the ground up?

09:48 7 A. Well, it depends on the size of the website.  
09:48 8 You know, smaller ones don't take that long, but this  
09:48 9 is a huge website, has a lot of pages and a lot of  
09:48 10 documents. So it takes about a couple years.

09:48 11 Q. Did Microchip ultimately redesign its website?

09:48 12 A. Yes.

09:48 13 MR. JENSEN: Mr. Thompson, you can take  
09:48 14 that down.

09:48 15 And -- well, let me -- since there's been  
09:49 16 some confusion about getting exhibits into evidence,  
09:49 17 let me offer that into evidence. That is Joint  
09:49 18 Exhibit 104.

09:49 19 MR. DEVLIN: No objection.

09:49 20 THE COURT: It'll be admitted.

09:49 21 MR. JENSEN: And, Mr. Thompson, could you  
09:49 22 please pull up Joint Exhibit 101?

09:49 23 BY MR. JENSEN:

09:49 24 Q. And, Ms. Mahar, do you recognize this  
09:49 25 document?

09:49 1 A. Yes. I do. It was a web proposal from DRL,  
09:49 2 and it explains what we needed to do to fix the site.

09:49 3 Q. And what is the date on this document?

09:49 4 A. October 16, 2018.

09:49 5 Q. And who prepared it?

09:49 6 A. Cody Miller.

09:49 7 Q. Okay. And he's associated with what company?

09:49 8 A. Dynamic Range Labs. He's the CEO. He doesn't  
09:49 9 really get involved in the project or the day-to-day,  
09:49 10 but he is the founder of that company.

09:50 11 Q. And did Microchip solicit proposals or bids  
09:50 12 from a number of different companies to assist with the  
09:50 13 redesign?

09:50 14 A. That's our typical practice.

09:50 15 Q. Okay. And DRL was the company that was  
09:50 16 ultimately selected for this particular project?

09:50 17 A. Yeah.

09:50 18 Q. Okay.

09:50 19 MR. JENSEN: All right. Let me move that  
09:50 20 into evidence as well, Joint Exhibit 101.

09:50 21 MR. DEVLIN: No objection.

09:50 22 THE COURT: It'll be admitted.

09:50 23 BY MR. JENSEN:

09:50 24 Q. And one thing I'd like to do, Ms. Mahar, is to  
09:50 25 try and help put kind of some of these events in the

09:50 1 context of a timeline --

09:50 2 A. Yeah.

09:50 3 Q. -- I think would be helpful.

09:50 4 Did you prepare a slide --

09:50 5 A. I did.

09:50 6 Q. -- to help with that? Okay.

09:50 7 MR. JENSEN: Mr. Thompson, could you  
09:50 8 bring up the timeline slide? And we'll place a couple  
09:50 9 of these data points on the timeline.

09:50 10 BY MR. JENSEN:

09:50 11 Q. So what time period are we looking at here on  
09:50 12 your timeline, Ms. Mahar?

09:50 13 A. 2018 to 2020.

09:51 14 Q. Okay. And in roughly what time frame was the  
09:51 15 decision made to redesign the website? Or at least it  
09:51 16 was under consideration?

09:51 17 A. Right. In order for Grace to have made the  
09:51 18 presentation that she did, she had to have a lot of  
09:51 19 discussions with business users, developers, managers,  
09:51 20 and be able to pull all the information together. So  
09:51 21 it started sometime around the mid of 2018.

09:51 22 Q. Okay.

09:51 23 MR. JENSEN: And could we pull up the  
09:51 24 first couple of points there?

09:51 25 BY MR. JENSEN:



09:51 1 Q. So we just looked at this web proposal from  
09:51 2 DRL, Joint Exhibit 101. And that was in kind of late  
09:51 3 2018, October time frame?

09:51 4 A. Yes.

09:51 5 Q. Okay. And the other, the old house/new house  
09:51 6 document we looked at, that was roughly what time  
09:51 7 frame?

09:51 8 A. Early in 2019.

09:51 9 Q. Okay. And that kind of old house/new house  
09:51 10 image, was that the only presentation in which that  
09:51 11 figure appeared?

09:51 12 A. No. It kind of resonates with you.

09:51 13 Q. Okay.

09:51 14 A. So it appeared a lot.

09:51 15 Q. So it might have been used a little bit  
09:52 16 earlier; it might have been used a little bit later as  
09:52 17 well. But certainly in that kind of rough late 2018,  
09:52 18 early 2019 period?

09:52 19 A. That's right.

09:52 20 Q. Okay. So let's stick with this -- kind of  
09:52 21 this time frame we're looking at here, the fall of  
09:52 22 2018. You know, you mentioned that a redesign project  
09:52 23 would take a significant amount of time?

09:52 24 A. Yes.

09:52 25 Q. Were there any changes that Microchip made to

09:52 1 the website, you know, maybe smaller changes or  
09:52 2 quick-fix type changes in this fall 2018 time period?

09:52 3 A. Yes. We made some cosmetic changes to the  
09:52 4 website. We also made the change to get rid of a left  
09:52 5 navigation. So on web pages you might have a lot of  
09:52 6 links on the left side. We repurposed that to be a  
09:52 7 horizontal format with some drop-downs.

09:52 8 Q. Okay. And prior to the fall of 2018 -- well,  
09:52 9 let me follow up on that. You said there's a left  
09:52 10 navigation, and it was sort of repurposed, I think you  
09:53 11 said, into a --

09:53 12 A. Yes.

09:53 13 Q. -- a different horizontal menu path; is that  
09:53 14 correct?

09:53 15 A. Yes. That's right.

09:53 16 Q. Okay. And is that the feature that we've  
09:53 17 heard about in this trial that's accused?

09:53 18 A. Yes.

09:53 19 Q. Okay. So prior to fall of 2018, did the  
09:53 20 microchip.com website even have the accused -- what's  
09:53 21 been called the breadcrumb?

09:53 22 A. No. It did not.

09:53 23 Q. Okay. Very good.

09:53 24 Were any of the changes made in this kind of  
09:53 25 fall 2018 time period intended to be permanent? Or

09:53 1 were they more in the nature of a temporary fix?

09:53 2 A. Yeah. They were a temporary fix. Very much a  
09:53 3 Band-Aid until we could go through the process of  
09:53 4 redesigning the website. It takes a long time, so we  
09:53 5 tried to give some changes that might hold us over for  
09:53 6 a little while.

09:53 7 Q. Okay. So notwithstanding some of these, you  
09:53 8 know, cosmetic changes that were implemented in the  
09:53 9 fall of 2018, was it still necessary to undertake this  
09:53 10 wholesale redesign project?

09:54 11 A. Yes. Absolutely. I think you could tell from  
09:54 12 those images that it needed to be rebuilt.

09:54 13 Q. What was the -- well, let me ask you this:  
09:54 14 Was there an internal kind of name -- I'll call it a  
09:54 15 code name, but --

09:54 16 A. Yeah. We called it coat of paint. Kind of  
09:54 17 a -- just a way to kind of refer to the house. You  
09:54 18 know, sometimes you just put a little paint on it and  
09:54 19 kind of make it feel and look a little better, but it  
09:54 20 doesn't really address the underlying problems.

09:54 21 Q. Okay. So what were some of those fundamental  
09:54 22 underlying problems that remained to be fixed?

09:54 23 A. Yeah. Every time we tried to move out a code  
09:54 24 change to change or update a functionality, the code  
09:54 25 would break. The database would crash. We'd have to

09:54 1 rebuild the database. And we'd have to adjust all of  
09:54 2 the code to kind of get it to work again. So it was  
09:54 3 very challenging.

09:55 4 MR. JENSEN: Mr. Thompson, why don't we  
09:55 5 switch from the timeline and go back to Joint  
09:55 6 Exhibit 104, Page 6, please?

09:55 7 BY MR. JENSEN:

09:55 8 Q. And this is from that old house/new house  
09:55 9 slide deck we were just looking at. And what was the  
09:55 10 time frame of this document again?

09:55 11 A. The fall of 2018.

09:55 12 Q. Okay. Was this before or after these cosmetic  
09:55 13 changes had been implemented?

09:55 14 A. I believe after.

09:55 15 Q. Okay. And what is shown on this slide? What  
09:55 16 is this slide intended to convey?

09:55 17 A. Yeah. It shows the importance of having a  
09:55 18 fast page load, the time it takes for a page to  
09:55 19 display, for you to see it. So it's really the  
09:55 20 importance of that.

09:55 21 Q. So this page load time problem and the other  
09:55 22 issues you'd mentioned continued to exist after the  
09:55 23 fall of 2018?

09:55 24 A. Yes. That's right.

09:55 25 Q. So adding the accused breadcrumb feature did

09:56 1 not solve any of these problems we're looking at on  
09:56 2 this slide?

09:56 3 A. No.

09:56 4 Q. Okay. And so I think you mentioned that  
09:56 5 Microchip retained DRL to assist with the website  
09:56 6 redesign, correct?

09:56 7 A. That's right.

09:56 8 Q. Did they redesign the whole thing by  
09:56 9 themselves? Or did they work with Microchip? What was  
09:56 10 the -- was there a balance between the two? How did  
09:56 11 that relationship work?

09:56 12 A. Yeah. It was such a large project that they  
09:56 13 retained people, but we also used our whole team to  
09:56 14 rebuild the website.

09:56 15 MR. JENSEN: Could we go back to the  
09:56 16 timeline, please, Mr. Thompson?

09:56 17 BY MR. JENSEN:

09:56 18 Q. So while he's pulling that up, everything  
09:56 19 we've been talking about here so far, all the events,  
09:56 20 the redesign proposal, the website problems, et cetera,  
09:57 21 was that before or after Caddo filed the lawsuit that  
09:57 22 brings us here?

09:57 23 A. Oh, it was almost a year before.

09:57 24 Q. Did Microchip's decision to redesign the  
09:57 25 microchip.com website have anything whatsoever to do

09:57 1 with this lawsuit?

09:57 2 A. No. It did not.

09:57 3 Q. Did DRL perform an assessment of the old  
09:57 4 website -- I think you called it the coat of paint --  
09:57 5 prior to undertaking the actual redesign work itself?

09:57 6 A. Yeah. They did. They did a great analysis.  
09:57 7 Typically we call it discovery period. But yeah, they  
09:57 8 did a great Phase 1.

09:57 9 MR. JENSEN: Mr. Thompson, could you  
09:57 10 bring up Joint Exhibit 105, please?

09:57 11 BY MR. JENSEN:

09:58 12 Q. Do you recognize this document, Ms. Mahar?

09:58 13 A. Yes. I do.

09:58 14 Q. What is it?

09:58 15 A. It's the Phase 1 Deliverables from Dynamic  
09:58 16 Range Labs. And basically it's their assessment of all  
09:58 17 of the problems that involved the microchip.com  
09:58 18 website. And it describes how we should address them.

09:58 19 Q. Okay. Do you know how long this document is?

09:58 20 MR. JENSEN: And perhaps Mr. Thompson can  
09:58 21 help us and just flip to the end.

09:58 22 BY MR. JENSEN:

09:58 23 Q. We can see how many pages, since we don't have  
09:58 24 the --

09:58 25 A. Yeah. I think it's a couple hundred pages.

09:58 1 Q. A couple hundred pages of problems they  
09:58 2 identified?

09:58 3 A. Yeah.

09:58 4 Q. Okay. All right. And who prepared this  
09:58 5 document?

09:58 6 A. Dynamic Range Labs, DRL.

09:58 7 Q. And this was given to Microchip?

09:58 8 A. That's right.

09:58 9 Q. Were you in your current role at this time  
09:58 10 when DRL provided this document?

09:58 11 A. Yes. This was right about the time that I  
09:58 12 started managing the team.

09:58 13 Q. And so did you receive and review this  
09:58 14 document in the normal course of business?

09:58 15 A. Yes.

09:58 16 Q. All right.

09:59 17 MR. JENSEN: And, Mr. Thompson, can you  
09:59 18 turn to Page 50 of this document, please?

09:59 19 BY MR. JENSEN:

09:59 20 Q. And I'd like to call your attention,  
09:59 21 Ms. Mahar -- I'm going to have to zoom in, but it's  
09:59 22 kind of the -- I think it's Item No. 3 in the little  
09:59 23 yellow box there.

09:59 24 A. Yes.

09:59 25 Q. Let's go up a little bit to the text. I think

09:59 1 there's two No. 3s, and they relate to each other.

09:59 2 A. Okay.

09:59 3 Q. Could you read -- just read the first sentence  
09:59 4 of this paragraph?

09:59 5 A. So often across the Microchip website, the  
09:59 6 navigation on a page doesn't match the top navigation.

09:59 7 Q. What does that mean? What is that referring  
09:59 8 to?

09:59 9 A. It's referring to the secondary nav, what  
09:59 10 we've been calling the breadcrumb, and how it relates  
09:59 11 to the top navigation.

09:59 12 Q. So on the microchip.com website, there's a top  
09:59 13 navigation menu, and it's got some drop-downs that a  
09:59 14 user can navigate and make a selection?

09:59 15 A. That's correct.

09:59 16 Q. And at that point a so-called breadcrumb or a  
10:00 17 menu path will appear underneath?

10:00 18 A. That's correct.

10:00 19 Q. Okay. And what is this observation saying  
10:00 20 about the consistency of those two menus?

10:00 21 A. It doesn't -- it doesn't match. It's not  
10:00 22 consistent. So you can look at the top navigation  
10:00 23 there, and it has Products, Application, Design, Sample  
10:00 24 and Buy, and About.

10:00 25 And none of those words appear in that second



10:00 1 level. It says Home, Security ICs, Crypto, and  
10:00 2 Authentication. And so it doesn't match.

10:00 3 Q. And did DRL view this as a good thing or a bad  
10:00 4 thing?

10:00 5 A. Bad thing. It was very confusing for our  
10:00 6 customers. They didn't understand -- they didn't  
10:00 7 understand it.

10:00 8 Q. How frequently did this mismatch occur?

10:00 9 A. On many pages.

10:00 10 Q. Did you ever personally observe this mismatch  
10:01 11 that DRL observed?

10:01 12 A. Yes.

10:01 13 MR. JENSEN: You can take that down,  
10:01 14 Mr. Thompson.

10:01 15 BY MR. JENSEN:

10:01 16 Q. And I take it you've -- well, let me take a  
10:01 17 step back.

10:01 18 We've got a video, very short video, that I  
10:01 19 would like to show for you.

10:01 20 MR. JENSEN: Could we pull up,  
10:01 21 Mr. Thompson, Defendant's Exhibit 463?

10:01 22 And why don't you pause it there for just  
10:01 23 a moment, Mr. Thompson?

10:01 24 So kind of maybe rewind it to the  
10:01 25 beginning.

10:01 1 BY MR. JENSEN:

10:01 2 Q. So what is it that's on the screen here? What  
10:01 3 are we looking at?

10:01 4 A. The Google search engine.

10:01 5 Q. Okay. And what I'd like to do is just let's  
10:01 6 watch this video all the way through.

10:01 7 A. Okay.

10:01 8 Q. All right. And then I'll come back and ask  
10:02 9 you a couple of questions about it.

10:02 10 A. Sure.

10:02 11 (Video played.)

10:02 12 MR. JENSEN: Okay. Go ahead and you can  
10:02 13 just hit pause there. That's all there is to it.

10:02 14 BY MR. JENSEN:

10:02 15 Q. So do you recognize the website that was shown  
10:02 16 in this video?

10:02 17 A. Yes.

10:02 18 Q. Okay. And what website was that?

10:02 19 A. Microchip.com.

10:02 20 Q. Microchip.com.

10:02 21 And you're familiar with that website?

10:02 22 A. Very familiar. I've gone to a lot of pages.

10:02 23 Q. And what did we observe a user doing on the  
10:02 24 website in this video?

10:02 25 A. Sure. They went to the top navigation and

10:02 1 selected Tools and something and then Encryption, and  
10:02 2 then they went to MPLAB® Connect Configurator.

10:03 3 Q. Okay. And do you know if this video is from  
10:03 4 the old website or the redesigned website?

10:03 5 A. It's actually both. We did a phased approach  
10:03 6 in rolling out our website because it was so large. We  
10:03 7 wanted to make sure that we could roll out a phase,  
10:03 8 make sure it worked right, and then do the next section  
10:03 9 and then the next section.

10:03 10 So what you saw was the redesigned homepage,  
10:03 11 and then this is from the old website.

10:03 12 Q. And how do you know that this functionality  
10:03 13 that we observed here was from the old website?

10:03 14 A. You can tell because this -- you guys call it  
10:03 15 a breadcrumb -- this breadcrumb is available, the  
10:03 16 colors are a little different, that kind of thing.

10:03 17 Q. Okay.

10:03 18 MR. JENSEN: And let's -- if you could  
10:03 19 play it one more time, Mr. Thompson, and I might ask  
10:03 20 you to pause it along the way because I want to take  
10:03 21 careful note of the selections that are being made by  
10:03 22 the user from the top navigation.

10:04 23 (Video played.)

10:04 24 MR. JENSEN: Just keep playing here.

10:04 25 (Video played.)

10:04 1 A. So it's Tools and Software.

10:04 2 BY MR. JENSEN:

10:04 3 Q. Tools and Software.

10:04 4 A. And then Embedded Software Center. And MPLAB®  
10:04 5 Code -- Connect Configurator. Sorry.

10:04 6 Q. And in the resulting path, what are the links  
10:04 7 in that -- the resulting path, Ms. Mahar?

10:04 8 A. Home, Internet -- or Interface and  
10:04 9 Connectivity, USB, and then MPLAB® Connect  
10:04 10 Configurator. It doesn't match the path that we just  
10:04 11 took.

10:04 12 Q. Was this a one-off example?

10:04 13 A. No. This was very common.

10:04 14 Q. Why?

10:04 15 A. Because we manually typed in those links that  
10:04 16 you see in that breadcrumb.

10:04 17 Q. And can you explain a little bit more, what do  
10:04 18 you mean you "manually typed" them in?

10:05 19 A. Right. So I had a couple guys on my team,  
10:05 20 Sean and Anthony. They -- bless them. They worked  
10:05 21 really hard. They spent lots and lots of hours typing  
10:05 22 in those labels and those links on what you see here.  
10:05 23 That was a fixed path on that breadcrumb.

10:05 24 Q. And I think you said, you know, we implemented  
10:05 25 these fixed paths.

10:05 1 A. Oh, that's right.

10:05 2 Q. And is that the royal "we," like when my dad  
10:05 3 says, we need to reroof the house?

10:05 4 A. Yeah. I have limited resources, so sometimes  
10:05 5 I had to go in and type in the links as well.

10:05 6 Q. So you personally --

10:05 7 A. Yes.

10:05 8 Q. -- as the head of the website team, had to go  
10:05 9 in and enter some of these fixed paths that resulted in  
10:05 10 the mismatch?

10:05 11 A. That's correct.

10:05 12 Q. Okay.

10:05 13 A. I -- you know, we wear lots of hats when we  
10:05 14 work for a company that makes stuff.

10:05 15 Q. And I think you mentioned earlier the website  
10:05 16 has a lot of pages?

10:06 17 A. Yeah. We have, I don't know, 25,000 pages,  
10:06 18 more or less. It's huge.

10:06 19 Q. And how much work was it to manually enter all  
10:06 20 of these fixed paths that you mentioned?

10:06 21 Let's say a new link comes on and you need a  
10:06 22 new fixed path. How much work was this to do?

10:06 23 A. A lot of work. We would get requests from  
10:06 24 business users to, say, add a new page, and we'd have  
10:06 25 to go into the code and type in the new name and type

10:06 1 in the new link, and then it would go out to  
10:06 2 production. And if something changed, we'd have to go  
10:06 3 back in and make the manual change.

10:06 4 Q. Was that an efficient use of resources on your  
10:06 5 team?

10:06 6 A. No. I was really -- I was really kind of mad  
10:06 7 about it because it -- you know, developers, they  
10:06 8 should be building stuff. They should be working on  
10:06 9 new functions, not putting links on pages.

10:06 10 Q. And what was DRL's recommendation as it  
10:06 11 related to using this fixed-path approach that you have  
10:07 12 described?

10:07 13 A. Yeah. They recommended that we get rid of it.

10:07 14 Q. Did Microchip follow DRL's recommendation?

10:07 15 A. Yes. We did.

10:07 16 Q. And how long had this functionality been in  
10:07 17 place when DRL came to you and said, essentially, this  
10:07 18 is no good and let's change it; let's fix it; let's do  
10:07 19 it right?

10:07 20 A. Yeah. It was only a couple of months before  
10:07 21 they recommended that we get rid of it.

10:07 22 Q. So this feature was implemented or added, I  
10:07 23 think you said, in the fall of 2018. And then again --

10:07 24 MR. JENSEN: Maybe we can pull the  
10:07 25 timeline up, please, Mr. Thompson.

10:07 1 BY MR. JENSEN:

10:07 2 Q. So it was added late 2018. And we have the  
10:07 3 document there where DRL said, hey, this is a problem.  
10:07 4 That's April.

10:07 5 Roughly how long was this even live on the  
10:07 6 Internet before the recommendation was made to take it  
10:07 7 down?

10:07 8 A. Yeah. Just several months.

10:07 9 Q. Okay. And was all of this done again before  
10:08 10 or after Caddo sued Microchip?

10:08 11 A. I believe over a year before.

10:08 12 Q. Okay. So all of these recommendations and the  
10:08 13 decisions to replace this functionality were made more  
10:08 14 than a year before you were sued?

10:08 15 A. That's right.

10:08 16 Q. And when did Microchip first learn of the  
10:08 17 patents in this case?

10:08 18 A. March of 2020.

10:08 19 Q. Okay.

10:08 20 A. Yeah.

10:08 21 Q. And that's when the lawsuit was filed?

10:08 22 A. That's right.

10:08 23 Q. Did Caddo or 511 notify or provide any  
10:08 24 advanced warning to Microchip that they had patents and  
10:08 25 that they thought Microchip was using their patents?

10:08 1 A. No. I really wish they would have.

10:08 2 Q. And you would have been made aware of that as  
10:08 3 the head of the website team if there was a patent  
10:08 4 laws- --

10:08 5 A. Absolutely.

10:08 6 Q. -- or a patent assertion of some kind?

10:08 7 A. Yes. Absolutely.

10:08 8 Q. Okay. So does the menu path that we saw in  
10:08 9 the video for the old website depend on the selections  
10:08 10 the user made to get to that web page?

10:09 11 A. I'm sorry. Could you --

10:09 12 Q. Yeah. We've got the wrong --

10:09 13 MR. JENSEN: We can take the timeline  
10:09 14 down.

10:09 15 A. Thank you.

10:09 16 BY MR. JENSEN:

10:09 17 Q. It probably throws you off a little bit.

10:09 18 A. A little bit.

10:09 19 Q. Yeah.

10:09 20 Yeah. Does the menu path, the breadcrumb, so  
10:09 21 to speak, on the old website depend on the specific  
10:09 22 selections the user makes from the top navigation?

10:09 23 A. No. It doesn't.

10:09 24 Q. Was fixing this kind of broken approach to the  
10:09 25 secondary navigation menu the only recommendation that



10:09 1 DRL made to Microchip?

10:09 2 A. Not by a long shot.

10:09 3 Q. Okay. And we saw -- we didn't go through it,  
10:09 4 and we're not going to go through all 200 pages of the  
10:09 5 recommendations.

10:09 6 A. Thank you.

10:09 7 Q. But I do want to ask about one other  
10:09 8 recommendation that they had in particular.

10:10 9 MR. JENSEN: And before I forget, let me  
10:10 10 move Defendant's Exhibit 463 into evidence.

10:10 11 MR. DEVLIN: No objection, Your Honor.

10:10 12 THE COURT: Be admitted.

10:10 13 MR. JENSEN: Mr. Thompson, could you  
10:10 14 please pull up Defendant's Exhibit 430?

10:10 15 BY MR. JENSEN:

10:10 16 Q. And while he's doing that -- well, it came up  
10:10 17 very quick.

10:10 18 All right. What are we looking at here,  
10:10 19 Ms. Mahar?

10:10 20 A. We're looking at our Phase 2 kickoff agenda,  
10:10 21 and it talks about the items that we wanted to discuss  
10:10 22 on making changes to the website.

10:10 23 Q. And what's the date of this document?

10:10 24 A. November 4 to 6 of 2019.

10:10 25 Q. And it references basically a kickoff meeting?

10:10 1 A. Yes.

10:10 2 Q. Okay. And this was preCOVID. So did this  
10:10 3 meeting happen in person?

10:10 4 A. It did.

10:10 5 Q. Okay. And are you listed on the front page in  
10:10 6 the first bullet as an attendee at this meeting?

10:10 7 A. Yes.

10:10 8 Q. Okay. And what was the purpose of this  
10:10 9 meeting?

10:10 10 A. To discuss how we wanted to approach Phase 2  
10:11 11 of making changes to the website, the microchip.com.

10:11 12 Q. And let's see.

10:11 13 MR. JENSEN: How long is this particular  
10:11 14 document, Mr. Thompson?

10:11 15 A. I think it's about ten pages, if I recall.

10:11 16 BY MR. JENSEN:

10:11 17 Q. Okay.

10:11 18 MR. JENSEN: I think we can just stick on  
10:11 19 the first page. Could you blow up for us, please,  
10:11 20 the -- maybe those last two bullets at the bottom?

10:11 21 BY MR. JENSEN:

10:11 22 Q. And before I ask about that, who prepared this  
10:11 23 agenda?

10:11 24 A. Dynamic Range Labs.

10:11 25 Q. Okay. And they provided it to you in

10:11 1 connection with the meeting?

10:11 2 A. That's right.

10:11 3 Q. Okay. And it had some of their  
10:11 4 recommendations and topics for discussion?

10:11 5 A. Yes.

10:11 6 Q. Okay. And what is the recommendation or topic  
10:11 7 that's here on the screen right now, the last bullet?

10:11 8 A. To update the breadcrumb to not include  
10:11 9 drop-downs.

10:11 10 Q. So on the old website, I don't think it showed  
10:11 11 it in the video, but if you had hovered over those kind  
10:11 12 of menu links, what would have happened?

10:11 13 A. It would have shown a drop-down menu.

10:11 14 Q. Okay. A drop-down menu. Very good.

10:12 15 And what was DRL's recommendation -- in  
10:12 16 addition to fixing the -- sort of the mismatch, what  
10:12 17 was their recommendation as to having that drop-down  
10:12 18 menu as part of the breadcrumb?

10:12 19 A. To get rid of it.

10:12 20 Q. Okay. Why?

10:12 21 A. Because it was a little confusing. There  
10:12 22 really wasn't a lot of value in it. You have the top  
10:12 23 navigation. You have the links right there on every  
10:12 24 page. Why have a secondary one? They can just use  
10:12 25 what's already there.

10:12 1 Q. And with that in mind, let me just ask: Why  
10:12 2 did Microchip kind of implement that feature in the  
10:12 3 first instance, right?

10:12 4 In the fall of 2018, so as part of the coat of  
10:12 5 paint, you said there was a left nav. You kind of  
10:12 6 repurposed it, switched it. What was the reasoning  
10:12 7 behind that?

10:12 8 A. It was kind of -- it was happening on some  
10:12 9 sites in the industry, and so we thought we'd try it  
10:12 10 out. It didn't end up to be very useful for us at all.

10:12 11 Q. Okay. Did Microchip implement this  
10:13 12 recommendation to remove the drop-down menus --

10:13 13 A. Yes. We did.

10:13 14 Q. -- as part of the redesign?

10:13 15 A. Yes.

10:13 16 Q. Okay. Was that like a major part of the  
10:13 17 redesign project?

10:13 18 A. No.

10:13 19 Q. Okay. That was done kind of together with the  
10:13 20 wholesale --

10:13 21 A. Yes.

10:13 22 Q. Okay. The project as a whole?

10:13 23 A. Yes.

10:13 24 Q. All right. And we saw this --

10:13 25 MR. JENSEN: Could you pull up the

10:13 1 timeline slide once again?

10:13 2 BY MR. JENSEN:

10:13 3 Q. Okay. So now we've got the -- kind of the  
10:13 4 kickoff meeting that happened here, the recommendation  
10:13 5 to remove the drop-down functionality.

10:13 6 And was that recommendation made and adopted  
10:13 7 by Microchip before or after Caddo filed this lawsuit?

10:13 8 A. Before.

10:13 9 Q. Okay. The implementation of that -- when did  
10:13 10 that start to occur? Sort of the rollout, all the work  
10:14 11 was done, and it was actually starting to go live on  
10:14 12 the Internet?

10:14 13 A. Right. So I mentioned that we did this  
10:14 14 project in phases. So we had Phases 2, 3, and 4. So  
10:14 15 the pages started to roll out in June of 2020.

10:14 16 MR. JENSEN: All right. Mr. Thompson,  
10:14 17 let's pull up, please, Defendant's Exhibit 344.

10:14 18 BY MR. JENSEN:

10:14 19 Q. And what is Exhibit 344, Ms. Mahar?

10:14 20 A. The User Interface Style Guide. It tells our  
10:14 21 developers how to create the interface itself. It  
10:14 22 talks about what fonts to use, what colors to use, how  
10:14 23 to make buttons, what to put on the page itself as far  
10:14 24 as a functionality.

10:14 25 Q. And who prepares this, the UI Style Guide?

10:14 1 A. DRL.

10:14 2 Q. Okay. And why -- did they prepare that at  
10:14 3 your request?

10:14 4 A. Yeah. So what we do is, we give this to all  
10:15 5 of our developers so that they're making all of the  
10:15 6 same -- the code all of the same way. So when we put,  
10:15 7 you know, code from 20 or 30 different developers  
10:15 8 together, it all looks the same.

10:15 9 Q. And these are internal developers at the  
10:15 10 company or third parties or both?

10:15 11 A. Both DRL and Microchip developers.

10:15 12 Q. Okay.

10:15 13 MR. JENSEN: And before I forget, let me  
10:15 14 move into evidence Defendant's Exhibit 430.

10:15 15 MR. DEVLIN: No objection.

10:15 16 THE COURT: It'll be admitted.

10:15 17 MR. JENSEN: And likewise, let me move  
10:15 18 into evidence Defendant's Exhibit 344 that we're  
10:15 19 looking at now.

10:15 20 MR. DEVLIN: No objection.

10:15 21 THE COURT: It'll be admitted.

10:15 22 MR. JENSEN: Mr. Thompson, please turn to  
10:15 23 Page 7 of the style guide. And I'd like to ask you to  
10:15 24 zoom in. I think it's on the lower left corner there.

10:15 25 Yeah. Under the heading Breadcrumb.

10:15 1 Okay.

10:15 2 BY MR. JENSEN:

10:15 3 Q. What are we looking at here, Ms. Mahar, in the  
10:15 4 style guide?

10:15 5 A. It tells the developers how to create the  
10:15 6 breadcrumb. In this case it says that no breadcrumb  
10:16 7 hover or drilldown like on the current site.

10:16 8 And --

10:16 9 Q. I'm sorry. Go ahead.

10:16 10 A. Sorry. And the last breadcrumb item looks  
10:16 11 like the same, even though it is not clickable.

10:16 12 Q. I want to focus on the Item A there that says:  
10:16 13 No breadcrumb hover drilldown like on current site.

10:16 14 A. Uh-huh.

10:16 15 Q. What was the current site at that time?

10:16 16 A. That was the old website.

10:16 17 Q. Okay. That was the old website. And what was  
10:16 18 DRL saying here when they refer to this hover drilldown  
10:16 19 capability?

10:16 20 A. It's kind of like what you're talking about  
10:16 21 with the breadcrumb in this case, the alleged hover  
10:16 22 over a breadcrumb, and you get a drop-down menu.

10:16 23 Q. Okay. So the hover drilldown, that's just  
10:16 24 another way to say a drop-down menu?

10:16 25 A. Yes.

10:16 1 Q. Okay. And was this recommendation and these  
10:16 2 instructions to the, you know, the hover drilldown, the  
10:17 3 drop-down, was going to be gone, was this distributed  
10:17 4 to the Microchip website developers?

10:17 5 A. Yes. To all of the developers on the project.

10:17 6 Q. Okay. So was Microchip instructing its  
10:17 7 developers to remove the hover drilldown, or the  
10:17 8 drop-down menu, prior to Caddo filing this lawsuit?

10:17 9 A. Yes.

10:17 10 Q. Okay.

10:17 11 THE COURT: Counsel, about how much more  
10:17 12 time do you have with her?

10:17 13 MR. JENSEN: I'm probably halfway, maybe  
10:17 14 two thirds. If we -- to take a break?

10:17 15 THE COURT: That's why I was asking.

10:17 16 MR. JENSEN: You'll never get an  
10:17 17 objection from me to that suggestion.

10:17 18 THE COURT: Ladies and gentlemen of the  
10:17 19 jury, we'll stand in recess for about ten minutes.  
10:17 20 Please remember my instructions not to discuss the case  
10:17 21 amongst yourselves.

10:17 22 (Jury exited the courtroom.)

10:17 23 THE COURT: You may be seated.

10:18 24 Is there anything we need to take up?

10:18 25 MR. JENSEN: Nothing from us, Your Honor.



10:18 1 THE COURT: Okay. Very good.

10:18 2 (Recess taken.)

10:33 3 THE BAILIFF: All rise.

10:33 4 THE COURT: Please remain standing for  
10:34 5 the jury.

10:34 6 (Jury entered the courtroom.)

10:34 7 THE COURT: Thank you. You may be  
10:34 8 seated.

10:34 9 BY MR. JENSEN:

10:34 10 Q. Welcome back, Ms. Mahar.

10:34 11 A. Thank you.

10:34 12 Q. Before the break we were talking a little bit  
10:34 13 about the redesigned website.

10:34 14 A. Yes.

10:34 15 Q. Okay. And we looked at some documents that  
10:34 16 indicated that as part of the redesign, Microchip was  
10:34 17 removing this drop-down menu from the secondary  
10:34 18 navigation bar --

10:34 19 A. Yes.

10:34 20 Q. -- is that correct?

10:34 21 Did Microchip, in fact, remove that drop-down  
10:35 22 menu?

10:35 23 A. Yes. We did.

10:35 24 Q. Okay.

10:35 25 MR. JENSEN: Mr. Thompson, could you

10:35 1 bring up an Internet browser? And let's just go to the  
10:35 2 microchip.com website.

10:35 3 BY MR. JENSEN:

10:35 4 Q. And is the current microchip.com website the  
10:35 5 redesigned website?

10:35 6 A. Yes.

10:35 7 Q. Okay. So across the top of the website --

10:35 8 MR. JENSEN: And is this showing up for  
10:35 9 the jury? I don't see it on the monitor.

10:35 10 All right. There we go. Very good.

10:35 11 BY MR. JENSEN:

10:35 12 Q. So what is it that we see across the top of  
10:35 13 the website, kind of beneath the URL? Kind of next to  
10:35 14 the Microchip logo?

10:35 15 A. Yeah. It's the top navigation.

10:35 16 Q. And that's the main menu?

10:36 17 A. Yes.

10:36 18 Q. Okay.

10:36 19 MR. JENSEN: And, Mr. Thompson, let's  
10:36 20 just go ahead and navigate a path on that menu. We  
10:36 21 could go to Products, Amplifiers and Linear, and  
10:36 22 Comparator ICs, for example.

10:36 23 BY MR. JENSEN:

10:36 24 Q. And that brings up a new web page when the  
10:36 25 selection is made?

10:36 1 A. Yes.

10:36 2 Q. And can you read the path kind of that's  
10:36 3 underneath the Microchip logo?

10:36 4 A. Products, Amplifiers and Linear ICs, and  
10:36 5 Comparator ICs.

10:36 6 Q. Okay. And in this instance, on the redesigned  
10:36 7 website, does that match the path that was navigated?

10:36 8 A. Yes.

10:36 9 Q. Okay.

10:36 10 MR. JENSEN: And let's -- Mr. Thompson,  
10:36 11 if I could just ask you to hover the mouse over, let's  
10:36 12 say, the Products item there.

10:36 13 BY MR. JENSEN:

10:36 14 Q. What happens?

10:36 15 A. There's no drop-down menu.

10:36 16 MR. JENSEN: Likewise, let's go over the  
10:36 17 Amplifiers and Linear ICs.

10:36 18 A. No drop-down menu.

10:36 19 BY MR. JENSEN:

10:36 20 Q. Okay.

10:36 21 MR. JENSEN: Let's try another path,  
10:36 22 maybe just one more example. Go to Products, Analog.  
10:37 23 Well, that one doesn't seem to have any other -- let's  
10:37 24 do one that's got a few more links. Go to Products,  
10:37 25 Clock and Timing, and Atomic Clocks.

10:37 1 BY MR. JENSEN:

10:37 2 Q. And the resulting path is Products, Clock and  
10:37 3 Timing, Atomic Clocks; is that correct?

10:37 4 A. Correct.

10:37 5 Q. And that matches the selections that were  
10:37 6 made?

10:37 7 A. Yes.

10:37 8 Q. Okay. Is there a drop-down menu when he  
10:37 9 hovers over those links?

10:37 10 A. No.

10:37 11 Q. Is there any type of menu functionality  
10:37 12 whatsoever?

10:37 13 A. No.

10:37 14 Q. Okay.

10:37 15 MR. JENSEN: Why don't you leave that  
10:37 16 page up? I want to look at kind of one or two other  
10:37 17 things on this. Let's -- why don't we just go back to  
10:37 18 the home page? So click on the Microchip logo there.

10:37 19 BY MR. JENSEN:

10:37 20 Q. And let me ask you this: So without the  
10:37 21 drop-down menu on that breadcrumb, how can users find,  
10:38 22 you know, information on the microchip.com website?

10:38 23 A. Well, there's a couple mechanisms, but, you  
10:38 24 know, there's the top navigation, the top menu.

10:38 25 But what we've learned over the pandemic is

10:38 1 that search is really important. So you'll see that  
10:38 2 little spyglass just to the right of -- yep. That  
10:38 3 opens up a search bar.

10:38 4 And like you guys, I'm sure, you go to Google  
10:38 5 and you do a search on that search engine. Or you go  
10:38 6 to -- I go to Amazon and I search and I buy something,  
10:38 7 right? So...

10:38 8 Q. Okay.

10:38 9 MR. JENSEN: And let's see if we can just  
10:38 10 exit out of the search window, please.

10:38 11 BY MR. JENSEN:

10:38 12 Q. And I see just kind of in the maybe middle of  
10:38 13 the page, some logos, Get Design Help, Events,  
10:38 14 et cetera?

10:38 15 A. Yes.

10:38 16 Q. Are each of those links as well?

10:38 17 A. Yes.

10:38 18 Q. And those could be used to navigate or find  
10:38 19 information on --

10:38 20 A. Yes.

10:38 21 Q. -- on the web page?

10:38 22 So when a user visits the microchip.com page,  
10:38 23 just like we have here, before they've clicked on  
10:39 24 anything else, is there a breadcrumb on this page?

10:39 25 A. No. They haven't gone anywhere yet.

10:39 1 Q. Okay. So that only exists if they navigate  
10:39 2 the top menu?

10:39 3 A. Yeah. If they navigate through the site.

10:39 4 Q. Okay. And I see there's -- kind of looks like  
10:39 5 a shopping cart there, kind of in the -- maybe the  
10:39 6 middle, toward the right, where it says "Purchase  
10:39 7 Products"?

10:39 8 A. That's right.

10:39 9 Q. So at this point there isn't even a breadcrumb  
10:39 10 on the website, correct?

10:39 11 A. Correct.

10:39 12 Q. Okay. And somebody could click on the  
10:39 13 shopping cart. And if they did, what would happen?

10:39 14 A. They would go to microchipdirect.com.

10:39 15 MR. JENSEN: Why don't we see if that's  
10:39 16 the case, Mr. Thompson? Just go ahead and click on  
10:39 17 that link.

10:39 18 BY MR. JENSEN:

10:39 19 Q. And it looks like it opened up a -- like a new  
10:39 20 tab in the browser?

10:39 21 A. Yes.

10:39 22 Q. Okay. So if somebody followed that path to  
10:39 23 arrive at Microchip Direct, they would not have even  
10:39 24 navigated the top navigation menu, and there would have  
10:39 25 been no breadcrumb on the site at all?

10:39 1 A. That's correct.

10:39 2 Q. Okay.

10:39 3 MR. JENSEN: Let's close out of this tab,  
10:39 4 please, Mr. Thompson. We'll go back to the main  
10:40 5 Microchip site.

10:40 6 Or you can leave it up on the screen.  
10:40 7 Just close the tab.

10:40 8 All right. And I'm sorry. I want to go  
10:40 9 to the regular microchip.com site. My apologies.

10:40 10 Okay. And I see across that -- kind of  
10:40 11 that top banner, there's on the far right side, looks  
10:40 12 like -- I don't know if it's a link or not. Why don't  
10:40 13 you hover over it where it says "Order Now."

10:40 14 A. Yes.

10:40 15 BY MR. JENSEN:

10:40 16 Q. Okay. And, again, at this point there's not  
10:40 17 even a breadcrumb, let alone a breadcrumb with a  
10:40 18 drop-down on the website?

10:40 19 A. Correct.

10:40 20 Q. Okay. So somebody could click the Order Now  
10:40 21 button, and what would happen?

10:40 22 A. They would go to Microchip Direct.

10:40 23 Q. Okay.

10:40 24 MR. JENSEN: Let's just confirm that's  
10:40 25 the case.

10:40 1 Very good. So you can go ahead and close  
10:41 2 that -- the current tab, Mr. Thompson.

10:41 3 I got it wrong again. Let's go back to  
10:41 4 the regular Microchip site.

10:41 5 BY MR. JENSEN:

10:41 6 Q. We'll just look at one more thing. And in the  
10:41 7 far top right corner of the page, what is the icon that  
10:41 8 you see?

10:41 9 A. Next to the search, the little spyglass, is a  
10:41 10 person, and that's how you can log into your account  
10:41 11 and then where you get information about our products.  
10:41 12 And then you can go to the shopping cart, is the third  
10:41 13 icon.

10:41 14 Q. Okay. And what would happen if you click on  
10:41 15 the shopping cart?

10:41 16 A. You'd go to Microchip Direct.

10:41 17 Q. Okay. I don't know that we need to do that  
10:41 18 one. I think we've seen that enough.

10:41 19 What if somebody clicked on --

10:41 20 MR. JENSEN: Let's just scroll down in  
10:41 21 the page a little bit, Mr. Thompson. Maybe up just a  
10:41 22 little bit, the first -- yeah. AI is transforming  
10:42 23 SSDs. Let's go ahead and just click on that, see what  
10:42 24 happens.

10:42 25 BY MR. JENSEN:



10:42 1 Q. And in this instance, what appeared in that  
10:42 2 secondary navigation path?

10:42 3 A. It's taking you to a blog about -- with  
10:42 4 information about how artificial intelligence is  
10:42 5 transforming these products.

10:42 6 Q. And is there something in that sort of  
10:42 7 breadcrumb field where it says, I think, "About"?

10:42 8 A. Yes. It says "About" and then the name of the  
10:42 9 article.

10:42 10 Q. Did Mr. Thompson navigate a menu structure to  
10:42 11 make that appear?

10:42 12 A. No.

10:42 13 Q. Okay. He just clicked on a regular link on  
10:42 14 the web page?

10:42 15 A. Yes.

10:42 16 Q. Okay. Very good.

10:42 17 MR. JENSEN: You can take that down,  
10:42 18 Mr. Thompson. Thank you very much.

10:42 19 Mr. Thompson, could you bring up Joint  
10:43 20 Exhibit 104, please?

10:43 21 And let's go to Slide 6.

10:43 22 And let -- maybe let's zoom in a little  
10:43 23 bit on that.

10:43 24 BY MR. JENSEN:

10:43 25 Q. Have you seen this slide before, Ms. Mahar?

10:43 1 A. Yes. I have. It's part of a presentation  
10:43 2 that Grace made that talks about the changes that we  
10:43 3 need to make on the website.

10:43 4 Q. Okay.

10:43 5 MR. JENSEN: And I'd like to zoom in -- I  
10:43 6 mean, it's really, really tiny down there. I think  
10:43 7 it's the footnote in the bottom left of the slide, I  
10:43 8 mean, in something like 2-point font.

10:43 9 BY MR. JENSEN:

10:43 10 Q. Okay. And what does this -- what does this  
10:43 11 footnote say, Ms. Mahar?

10:43 12 A. It says that microchip.com drives \$215,000 of  
10:44 13 revenue a day through the e-commerce portal.

10:44 14 Q. Okay. We can just pause there, I think.  
10:44 15 And what is the e-commerce portal?

10:44 16 A. Microchip Direct.

10:44 17 Q. Okay. So is this referring to instances where  
10:44 18 somebody could be on the microchip.com website and then  
10:44 19 be redirected, for example, as we just saw, to the  
10:44 20 Microchip Direct site and make a purchase?

10:44 21 A. Yes.

10:44 22 Q. Okay. Very good.

10:44 23 And I think we just looked at, you know,  
10:44 24 several examples of how you could click on a link,  
10:44 25 whether it's a shopping cart, the Order Now button,

10:44 1 various other things, and be redirected from the  
10:44 2 microchip.com site to the microchipdirect.com site  
10:44 3 without using a breadcrumb at all?

10:44 4 A. That's right.

10:44 5 Q. Okay. Without using a drop-down breadcrumb?

10:44 6 A. Yes. That's right.

10:44 7 Q. Do you have an understanding as to whether  
10:44 8 this \$215,000-a-day revenue number that's shown here  
10:44 9 relates to the use of the accused breadcrumb in this  
10:45 10 case?

10:45 11 A. No. There's no indication on this slide.

10:45 12 Q. Okay. Based on what you know about the usage  
10:45 13 of the microchip.com website, is it your understanding  
10:45 14 that all \$215,000 a day of revenue would be driven from  
10:45 15 somebody using a drop-down breadcrumb on the  
10:45 16 microchip.com website?

10:45 17 A. No. It's highly suspect in my mind. I think  
10:45 18 that's not generally the case.

10:45 19 Q. And, in fact, the redesigned website doesn't  
10:45 20 even have a breadcrumb with a drop-down at all, does  
10:45 21 it?

10:45 22 A. No. It doesn't.

10:45 23 Q. And what has happened -- so this presentation,  
10:45 24 what was the -- kind of the point in time for this one?

10:45 25 A. Fall of 2018.

10:45 1 Q. Okay. Fall of 2018.

10:45 2 And you testified, I think, earlier before the  
10:45 3 break that Microchip acquired a number of companies --

10:45 4 A. Yes.

10:45 5 Q. -- in that 2014 to 2018 time frame?

10:45 6 A. Yes.

10:45 7 Q. Prior to all of those acquisitions, would this  
10:46 8 \$215,000-a-day number be higher or lower?

10:46 9 A. I'm sorry. Could you rephrase that question?

10:46 10 Q. So yeah. Sure. And I'll slow down for the  
10:46 11 court reporter. She is giving me the signal.

10:46 12 So you mentioned earlier that Microchip  
10:46 13 acquired a number of companies, some of them relatively  
10:46 14 large, between 2014 and 2018?

10:46 15 A. Yes.

10:46 16 Q. Okay. So if there were \$215,000 a day of  
10:46 17 sales in, you know, as shown on this slide in 2018 --

10:46 18 A. Uh-huh.

10:46 19 Q. -- prior to those acquisitions, when the  
10:46 20 company was smaller, would this number, 215,000 a day,  
10:46 21 have been larger or smaller?

10:46 22 A. Oh, this is definitely larger. When you  
10:46 23 acquire companies, you get bigger and bigger. So it  
10:46 24 would have been -- this is probably pretty high days,  
10:46 25 where we made a lot of sales.

10:46 1 Q. And what has happened since the -- well, I  
10:47 2 want to -- we'll get into this a little bit. When did  
10:47 3 the redesign start to be implemented?

10:47 4 A. We started putting web pages on the site, on  
10:47 5 the microchip.com website, in June, late June of 2020.

10:47 6 Q. And I think you said that was -- you said you  
10:47 7 started in June of 2020?

10:47 8 A. Yes. That's right.

10:47 9 Q. And it was a phased approach?

10:47 10 A. Yes.

10:47 11 Q. It wasn't the flip-the-switch?

10:47 12 A. No.

10:47 13 Q. Okay.

10:47 14 A. No. There's too many risks with a  
10:47 15 flip-the-switch, too many things could go wrong, too  
10:47 16 much data could not get to the right spot. It's just  
10:47 17 too big of a risk to go with a flip-the-switch on such  
10:47 18 a large website.

10:47 19 Q. And do you know what has happened -- since  
10:47 20 that time, since the -- kind of the release of the  
10:47 21 redesigned website, right, without the drop-down  
10:47 22 breadcrumb, what has happened to Microchip's kind of  
10:48 23 online sales that come from microchip.com to Microchip  
10:48 24 Direct?

10:48 25 A. It's gone way up.

10:48 1 Q. Okay. So removing the feature that was  
10:48 2 accused in this case resulted in an increase in online  
10:48 3 sales from microchip.com to Microchip Direct?

10:48 4 A. Yeah.

10:48 5 Q. Okay.

10:48 6 MR. JENSEN: Mr. Thompson, could you  
10:48 7 bring up Joint Exhibit 115?

10:48 8 BY MR. JENSEN:

10:48 9 Q. Do you recognize this exhibit, Ms. Mahar?

10:48 10 A. Yes. I do. I wrote it.

10:48 11 Q. And what is it?

10:48 12 A. This is a presentation that I would have given  
10:48 13 to my boss and my boss' boss talking about the items  
10:48 14 that we completed as part of the first part of Phase 4.

10:48 15 So we had Phases 2, 3, and 4, and then within  
10:48 16 that we had several parts. So this is the end of the  
10:48 17 first part of Phase 4.

10:48 18 Q. And what was the purpose of preparing this  
10:49 19 presentation?

10:49 20 A. It is to describe the things that we achieved  
10:49 21 during that time and to request funds to pay DRL for  
10:49 22 their services.

10:49 23 Q. Okay.

10:49 24 MR. JENSEN: Could we go to the next  
10:49 25 slide in the deck, please, Mr. Thompson?

10:49 1 BY MR. JENSEN:

10:49 2 Q. And this slide is titled "Burndown Chart"; is  
10:49 3 that correct?

10:49 4 A. Yes.

10:49 5 Q. Well, I'm unfamiliar with that phrase. What  
10:49 6 is a burndown chart?

10:49 7 A. So when you work with engineers, they use the  
10:49 8 term "burndown chart." But basically what it means is  
10:49 9 you have this amount of work and then you slowly  
10:49 10 complete it over time. So you're burning down the work  
10:49 11 until you get to -- you know, get it done.

10:49 12 Q. And it looks like there's a graph on this  
10:49 13 slide; is that right?

10:49 14 A. Yes. So the green line represents what we had  
10:49 15 planned to do. And --

10:49 16 Q. Let me pause you there for just a minute.  
10:49 17 What are the axes? There's an X-axis and a Y-axis.  
10:49 18 What are the axes here?

10:49 19 A. Sure. It's the percentage complete of the  
10:50 20 tasks that we were going to do. And it's across time  
10:50 21 on the bottom.

10:50 22 Q. Okay. And the -- I'll call it the Y-axis, if  
10:50 23 I can remember back to my math days, is zero to  
10:50 24 100 percent?

10:50 25 A. Correct.

10:50 1 Q. Okay. And then we'd have the time period on  
10:50 2 the bottom. What's the time period that's shown in  
10:50 3 this particular slide?

10:50 4 A. October 2020 to the end of April 2021.

10:50 5 Q. So I think you mentioned that starting in kind  
10:50 6 of June or the summertime of 2020, which was -- is not  
10:50 7 shown on this graph, would be to the left. That's when  
10:50 8 the initial rollout of the redesigned website took  
10:50 9 place?

10:50 10 A. That's right.

10:50 11 Q. And that's why the first data point on the  
10:50 12 left of this graph is not starting at a -- sort of  
10:50 13 100 percent. There had already been some work done.  
10:50 14 It looks like it's at, I don't know, 90 percent,  
10:50 15 something like that?

10:50 16 A. Yes. That's right.

10:50 17 Q. Okay. And by 90 percent, that means there's  
10:50 18 90 percent left to do or 90 percent has already been  
10:50 19 completed?

10:50 20 A. Left to do. There's 90 percent of the work  
10:51 21 still left to do.

10:51 22 Q. Okay. And at what point in time was this  
10:51 23 burndown chart prepared?

10:51 24 A. Right about -- right before October, I  
10:51 25 believe. No. I'm sorry. So it has a line, a vertical



10:51 1 line there, that says "today." So this chart was  
10:51 2 prepared around the beginning of February.

10:51 3 Q. Okay. So everything to the left of that chart  
10:51 4 was actual data. Redesigned pages that had actually  
10:51 5 been implemented?

10:51 6 A. That's right.

10:51 7 Q. Okay. And everything to the right of the  
10:51 8 chart would be -- would be a forecast or a projection?

10:51 9 A. That's right.

10:51 10 Q. A target?

10:51 11 A. Yes.

10:51 12 Q. Okay. Very good. Did Microchip complete --  
10:51 13 did it meet the goal that was on here? I think the  
10:51 14 target, the green line?

10:51 15 A. Yeah. So the target was to be 90 percent  
10:51 16 complete by April 1st. And we met that.

10:51 17 Q. Okay. And you say 90 percent complete.  
10:51 18 You're not saying it was 100 percent complete?

10:52 19 A. No.

10:52 20 Q. Okay.

10:52 21 A. No. That wasn't --

10:52 22 Q. And why is that?

10:52 23 A. You know, with such a large website, there's  
10:52 24 just a lot of work to do. And you get through as much  
10:52 25 as you can. And then you put a line in the sand and

10:52 1 you say you're there. And then you have to go through  
10:52 2 all of the cleanup and all of the peripheral  
10:52 3 applications and kind of do the rest of the work.

10:52 4 Q. Is it fair to say that's maybe kind of a  
10:52 5 substantial completion --

10:52 6 A. Yes.

10:52 7 Q. -- date? Not a 100 percent?

10:52 8 A. Yes.

10:52 9 Q. Okay.

10:52 10 A. That's what I mean.

10:52 11 Q. And even after this, I guess, maybe, you know,  
10:52 12 May time frame here of 2021, did there continue to be  
10:52 13 any kind of old website pages that were -- lingered  
10:52 14 around?

10:52 15 A. Yeah. Absolutely. There was like -- gosh, I  
10:52 16 don't know, maybe a percent left of work to just kind  
10:52 17 of go through and do. And like I said, there's other  
10:52 18 applications that are around the website, so  
10:52 19 microchip.com, as that project was substantially  
10:52 20 completed by that time.

10:52 21 Q. And what would Microchip do as it came across  
10:52 22 any of these kind of leftover old web pages?

10:53 23 A. Oh, we decide if we needed to keep them or  
10:53 24 not. And then we would either redesign them, or we  
10:53 25 would take them off of the Internet.

10:53 1 Q. Okay. And I think you were here during  
10:53 2 Mr. Sherwood's testimony when we looked at some PDF  
10:53 3 files that were available on the Microchip website?

10:53 4 A. That's right.

10:53 5 Q. Okay. And just what is a PDF file?

10:53 6 A. Yeah. It's a document. It's an electronic  
10:53 7 document.

10:53 8 Q. Okay. And that could be like a datasheet or  
10:53 9 something for a product?

10:53 10 A. Yeah. So for our products -- you guys aren't  
10:53 11 familiar with the word "datasheet," so let me explain.

10:53 12 Q. I'm sorry.

10:53 13 A. That's okay. So our silicon products have  
10:53 14 to -- you have to tell the engineer how to use the  
10:53 15 product, what's in it. And so we have datasheets. And  
10:53 16 they're anywhere from 50 pages to hundreds of pages.  
10:53 17 So those are substantial documents to us.

10:53 18 Q. And that's like a document somebody could just  
10:53 19 download onto their local computer and have a copy?

10:53 20 A. That's right.

10:53 21 Q. Okay. And as part of the redesign project,  
10:54 22 did Microchip redesign any of the, you know, PDF file  
10:54 23 links?

10:54 24 A. No. No.

10:54 25 Q. Why not?

10:54 1 A. That's not what you do with the file. It's  
10:54 2 like having a book. You know, you just -- you're  
10:54 3 giving somebody a book.

10:54 4 Q. Do the links to the PDF files have anything to  
10:54 5 do with the, you know, the drop-down menu or the  
10:54 6 breadcrumb?

10:54 7 A. No.

10:54 8 Q. Okay. All right.

10:54 9 MR. JENSEN: Mr. Thompson, you can take  
10:54 10 this slide down. And I'd like to go back to the  
10:54 11 timeline again to just kind of, you know, reorient us  
10:54 12 here.

10:54 13 A. Sure.

10:54 14 BY MR. JENSEN:

10:54 15 Q. So prior to the complaint being filed on  
10:54 16 March 27, 2020, Microchip had made the decision to  
10:54 17 remove the -- well, number one, to fix the broken  
10:54 18 breadcrumb; and two, to remove the drop-down menu  
10:54 19 feature --

10:54 20 A. Yes.

10:54 21 Q. -- is that correct?

10:54 22 A. Uh-huh.

10:55 23 Q. And then we saw, I think, on the burndown  
10:55 24 slide, that the actual rollout or implementation of the  
10:55 25 redesign took place a little while after the complaint

10:55 1 was filed?

10:55 2 A. Uh-huh.

10:55 3 Q. Okay. Did the timing and rollout of that  
10:55 4 implementation of the redesigned website result in any  
10:55 5 way from the fact that a lawsuit was filed?

10:55 6 A. No.

10:55 7 Q. That had been in the works for some time  
10:55 8 before?

10:55 9 A. Yes. Absolutely.

10:55 10 Q. Okay.

10:55 11 MR. JENSEN: You can take that down,  
10:55 12 Mr. Thompson.

10:55 13 BY MR. JENSEN:

10:55 14 Q. I want to switch gears just a little bit,  
10:55 15 Ms. Mahar, and ask you a few questions about the Forum  
10:56 16 website.

10:56 17 A. Okay.

10:56 18 Q. All right. You have some familiarity with the  
10:56 19 Forum website?

10:56 20 A. Yes.

10:56 21 Q. Okay. All right. Did Microchip write the  
10:56 22 software that implements the Forum website?

10:56 23 A. No. We did not.

10:56 24 Q. Who did?

10:56 25 A. A company called ASP Playground.

10:56 1 Q. And did Microchip, you know, license or  
10:56 2 purchase the Forum software from ASP Playground?

10:56 3 A. Yes. We did.

10:56 4 Q. How much did they charge? How much did you  
10:56 5 have to pay to get that software?

10:56 6 A. \$400 a year.

10:56 7 Q. And that's regardless of how many users there  
10:56 8 are on the Forum website?

10:56 9 A. That's correct.

10:56 10 Q. It's just a flat fee?

10:56 11 A. Flat fee.

10:56 12 Q. Okay. And was it a one-time fee, or do you  
10:56 13 have to pay it every year?

10:56 14 A. I think we paid it every year. We might have  
10:56 15 gotten an every-other-year deal. But it was pretty  
10:56 16 much every year.

10:56 17 Q. Okay. What is the URL for the Forum website?

10:57 18 A. Microchip.com/forums.

10:57 19 MR. JENSEN: Could we go ahead and pull  
10:57 20 that up, Mr. Thompson? We'll go to the Forum website.  
10:57 21 BY MR. JENSEN:

10:57 22 Q. Is the fact that the Forum website has the  
10:57 23 microchip.com URL -- or has microchip.com in the URL  
10:57 24 mean that the Forum website is the same as the  
10:57 25 microchip.com website?

10:57 1 A. No. It's completely different software.

10:57 2 Q. Okay. And you said you don't have  
10:57 3 responsibility for -- or primary responsibility, I  
10:57 4 should say, for this -- for the Forum site?

10:57 5 A. Yes. That's correct.

10:57 6 Q. There's another person or team within the  
10:57 7 company that is responsible for this?

10:57 8 A. That's correct.

10:57 9 Q. Okay. Why didn't -- so we talked about kind  
10:57 10 of this big redesign project. And that was, you  
10:57 11 know -- you were brought on to lead that effort.

10:57 12 A. Uh-huh.

10:57 13 Q. Why didn't you, you know, redesign the Forum  
10:57 14 site as well?

10:57 15 A. Right. The -- you know, we have limited  
10:57 16 resources, so we have to prioritize our work. So we  
10:58 17 decided to go with the website that was crumbling and  
10:58 18 falling down and fix that first. And then we look at  
10:58 19 the peripheral products.

10:58 20 MR. JENSEN: And let's just go ahead and  
10:58 21 click on, you know, one of the -- let's go down. Just  
10:58 22 click on one of the links there. It's a post, as it  
10:58 23 were, on the Forum.

10:58 24 BY MR. JENSEN:

10:58 25 Q. And I want to direct your attention,

10:58 1 Ms. Mahar, to the URL at the top there. It says  
10:58 2 microchip.com/forums, and it has a number followed with  
10:58 3 a -- kind of an extension. Can you see that? Sort  
10:58 4 of --

10:58 5 A. Yes.

10:58 6 Q. I don't know if I should call it a file  
10:58 7 extension but it's a -- what is that extension?

10:58 8 A. Do you want me to read it or just tell you  
10:58 9 about it?

10:58 10 Q. Just -- well --

10:58 11 A. Yeah. So at the very end it's .aspx, and  
10:58 12 that's a file format that's used with the .net platform  
10:58 13 for writing code for displaying pages.

10:58 14 Q. And how is it that you're familiar with the  
10:58 15 .net platform?

10:59 16 A. Our website is on .net platforms that are on  
10:59 17 Windows servers, Windows operating systems, and IIS.  
10:59 18 It's Internet Information Services.

10:59 19 Q. And who provides the -- kind of the .net  
10:59 20 platform? Is that something ASP Playground provides,  
10:59 21 for example? Because you get the software from them or  
10:59 22 from somebody else?

10:59 23 A. No. It's Microsoft.

10:59 24 Q. Microsoft. Okay. Right. The one -- the  
10:59 25 company that makes like the Windows OS? Okay.



10:59 1 A. Yeah.

10:59 2 Q. Are you aware of any other companies that sell  
10:59 3 software that can be used to host a discussion board or  
10:59 4 a Forum site?

10:59 5 A. Yes.

10:59 6 Q. How are you aware of those?

10:59 7 A. We've recently learned that ASP Playground as  
10:59 8 a company is going out of business. We cannot get  
10:59 9 ahold of them. Their website is down. And so we're  
10:59 10 looking for a replacement package.

10:59 11 Q. Have you considered any replacements?

10:59 12 A. Yes. We've considered several of them. One  
11:00 13 of them happens to be Salesforce, another package that  
11:00 14 we use.

11:00 15 Q. And how is it that -- why is it that you were  
11:00 16 looking at Salesforce in particular?

11:00 17 A. Well, we already have it, and it's easier to  
11:00 18 maintain one system rather than two separate systems.

11:00 19 So Salesforce has a -- comes along with what  
11:00 20 they call a "Community." And so Forums is the same  
11:00 21 thing as Community. They just started calling it a  
11:00 22 different thing lately. So they have an option that we  
11:00 23 could use for going to Forums with that.

11:00 24 Q. And how is it that Microchip already has some  
11:00 25 access to the Salesforce Community software?

11:00 1 A. Yeah. We pay a license for using the  
11:00 2 Salesforce platform.

11:00 3 Q. Did -- I think you mentioned some companies  
11:00 4 that you had acquired earlier?

11:00 5 A. Uh-huh.

11:00 6 Q. Did any of those companies use the Salesforce  
11:00 7 Community platform?

11:00 8 A. Yes. Yes. They did.

11:00 9 Q. Okay. Is that why it's sort of on your radar?

11:00 10 A. Yeah.

11:01 11 Q. Okay. How much would it cost Microchip to  
11:01 12 migrate from the existing ASP Forum platform and  
11:01 13 implement that on the Salesforce platform?

11:01 14 A. Well, the cost for using the Salesforce  
11:01 15 Community is pretty much zero. We already pay for the  
11:01 16 licenses, so it's just a function that we can, you  
11:01 17 know, use.

11:01 18 Q. Do you know -- have you used the Salesforce  
11:01 19 Community platform before?

11:01 20 A. I personally have not. It's managed by  
11:01 21 another group.

11:01 22 Q. Have you seen it in use?

11:01 23 A. Uh-huh. Yeah.

11:01 24 Q. Okay. Does it have a breadcrumb feature?

11:01 25 A. No. It doesn't.

11:01 1 Q. In your role as the web development team lead,  
11:01 2 Ms. Mahar, are you made aware of instances in which  
11:01 3 Microchip has licensed patents related to its website  
11:01 4 functionality?

11:01 5 A. Yes. I am.

11:02 6 Q. Has Microchip ever licensed any  
11:02 7 website-related patents before?

11:02 8 A. Yes. There's one in particular. It's called  
11:02 9 [REDACTED] We licensed a group or a portfolio of patents  
11:02 10 to use. I think we spent about [REDACTED] for it.

11:02 11 MR. JENSEN: Mr. Thompson, could you  
11:02 12 bring up Joint Exhibit 26, please?

11:02 13 BY MR. JENSEN:

11:02 14 Q. Ms. Mahar, do you recognize this exhibit?

11:02 15 A. Yes. I do.

11:02 16 Q. What is it?

11:02 17 A. It is the agreement between Microchip and  
11:02 18 [REDACTED] for using these licenses, licensing these  
11:02 19 patents. Sorry.

11:02 20 MR. JENSEN: I'd like to move the  
11:02 21 admission of Joint Exhibit 26.

11:02 22 MR. DEVLIN: No objection.

11:02 23 THE COURT: It'll be admitted.

11:02 24 BY MR. JENSEN:

11:02 25 Q. And who are the parties to this agreement,

11:02 1 Ms. Mahar?

11:02 2 A. [REDACTED] and Microchip Technology.

11:02 3 Q. And is this the final executed version of the  
11:02 4 license agreement?

11:03 5 A. I believe so. Are there signatures on the  
11:03 6 signature line?

11:03 7 Yes. This is the signed agreement.

11:03 8 Q. Okay. To the best of your knowledge,  
11:03 9 Ms. Mahar, did [REDACTED] sue Microchip before Microchip  
11:03 10 took a license?

11:03 11 A. No. They did not.

11:03 12 Q. So contrary to, I think, the experience that  
11:03 13 Mr. Moehrle had that we heard about earlier, where he  
11:03 14 sent a letter and nobody responded, is it the case that  
11:03 15 Microchip has, in fact, responded to such letters and  
11:03 16 taken licenses in the past?

11:03 17 A. Yes. We do.

11:03 18 Q. Based on your 20-plus years of experience  
11:03 19 working at Microchip, do you believe Microchip would  
11:03 20 knowingly infringe on someone else's patents?

11:03 21 A. No. That's just not who we are.

11:03 22 Q. Last question, Ms. Mahar: Are you proud of  
11:03 23 the work that you and your team have done to redesign  
11:03 24 and launch Microchip's redesigned website?

11:04 25 A. I am so proud of my team. They work so hard.

11:04 1 I'm really proud of them.

11:04 2 MR. JENSEN: I pass the witness.

11:04 3 CROSS-EXAMINATION

11:04 4 BY MR. DEVLIN:

11:04 5 Q. Good morning, Ms. Mahar.

11:04 6 A. Good morning.

11:04 7 Q. This is the first time you and I have ever  
11:04 8 spoken; maybe have said pleasantries in the hall or  
11:04 9 something?

11:04 10 A. Yes. That's right.

11:04 11 Q. Right.

11:04 12 I understand it's your first time testifying.  
11:05 13 Still a little nervous?

11:05 14 A. Yes. Yeah.

11:05 15 Q. All right. Let me tell you how this is going  
11:05 16 to go. I'm going to ask you some questions about some  
11:05 17 topics. You're going to agree with me sometimes and --  
11:05 18 I hope you'll agree -- you're going to disagree with me  
11:05 19 sometimes, and you're free to disagree, okay?

11:05 20 A. Okay.

11:05 21 Q. All right. And what we're going to try to do  
11:05 22 together is distill out what some of the real issues  
11:05 23 may be for the jury or where we all agree.

11:05 24 A. Okay.

11:05 25 Q. And so the jury doesn't have to worry about

11:05 1 it.

11:05 2 Is that all right?

11:05 3 A. That sounds good.

11:05 4 Q. Okay. There's not going to be any yelling, no  
11:05 5 slamming, anything, all right?

11:05 6 A. Thank you.

11:05 7 Q. We're going to be just fine. Thank you so  
11:05 8 much for being here with us today.

11:05 9 So the first thing I want to do is I want to  
11:05 10 work a little bit -- I know you're not managing the  
11:05 11 Forum website, but you are familiar with how it  
11:05 12 operates --

11:05 13 A. Yes.

11:05 14 Q. -- generally?

11:05 15 You've seen some of the things during this  
11:05 16 trial?

11:05 17 A. Yes.

11:05 18 Q. Now, by the way, the person who manages that,  
11:05 19 or the team, does that include Mr. Wolf, who we're  
11:05 20 going to hear from?

11:05 21 A. No.

11:05 22 Q. Okay. So someone -- that team was not  
11:05 23 available to come here to trial and testify about the  
11:05 24 Forum section?

11:05 25 A. Yeah. I don't know why they're not here.

11:05 1 Q. Okay. Thank you.

11:05 2 Well, let's do our best together.

11:06 3 A. Okay.

11:06 4 Q. We're going to --

11:06 5 MR. DEVLIN: Let's pull up the Forum  
11:06 6 section, Mr. Gooden.

11:06 7 Thank you.

11:06 8 BY MR. DEVLIN:

11:06 9 Q. So we're live on the Internet right now,  
11:06 10 Ms. Mahar, and we'll go as fast or slow as you need.

11:06 11 But let me just try to confirm a few things  
11:06 12 about how this Forum section works, make sure that what  
11:06 13 the jury has been seeing isn't smoke and mirrors,  
11:06 14 you'll -- you know, that we agree that what we're  
11:06 15 looking at on the screen really is happening on the  
11:06 16 web.

11:06 17 A. Sure.

11:06 18 Q. All right. Thank you.

11:06 19 MR. DEVLIN: So, Mr. Gooden, if you click  
11:06 20 on that and just hold there. All right.

11:06 21 Just pause there, please, Mr. Gooden.

11:06 22 BY MR. DEVLIN:

11:06 23 Q. So when Mr. Gooden clicks on that Forums tab  
11:06 24 on the Forums website, what happened was a drop-down  
11:06 25 menu appeared, right?

11:06 1 A. Yeah.

11:06 2 Q. Okay. And this is part of a hierarchical  
11:06 3 structure of drop-down menus on this Forums web page,  
11:06 4 right?

11:06 5 A. Yeah. I call it a top nav, but it's really  
11:06 6 different orientation.

11:06 7 Q. Sure. But the top nav is referencing the fact  
11:06 8 that it starts up at the top heading area, right?

11:06 9 A. Yeah. Uh-huh.

11:06 10 Q. But a lot of top navs have this drop-down  
11:07 11 structure like this one we're looking at here?

11:07 12 A. That's right.

11:07 13 Q. Okay. Great.

11:07 14 MR. DEVLIN: And before you do it,  
11:07 15 Mr. Gooden.

11:07 16 BY MR. DEVLIN:

11:07 17 Q. You've seen this, when Mr. Gooden hovers over  
11:07 18 one of these items, there's going to open up a  
11:07 19 subordinate or second level of the hierarchical  
11:07 20 structure, right?

11:07 21 A. Yeah. That's right.

11:07 22 Q. Great.

11:07 23 MR. DEVLIN: So let's go ahead and do  
11:07 24 that, Mr. Gooden, that third one.

11:07 25 And just for the record, that's what's



11:07 1 happened. Mr. Gooden is now hovering over something  
11:07 2 called 8-Bit Microcontrollers, and it's pulled out a  
11:07 3 subordinate menu subsidiary in the hierarchy on the  
11:07 4 right.

11:07 5 BY MR. DEVLIN:

11:07 6 Q. Did I get that right?

11:07 7 A. Yes.

11:07 8 Q. Okay. Great. Thank you.

11:07 9 And, again, if Mr. Gooden were to hover over  
11:07 10 one of those items, we see another -- a third level in  
11:07 11 that hierarchy of the menu structure; is that fair?

11:07 12 A. Yes.

11:07 13 Q. Okay. And you'd agree that a website is --  
11:07 14 can broadly be characterized as an information  
11:07 15 structure; is that fair?

11:08 16 A. Yeah.

11:08 17 Q. Was that a "yes"? Sorry.

11:08 18 A. Yes.

11:08 19 Q. Great. Thank you so much.

11:08 20 Okay. Now, before Mr. Gooden clicks this,  
11:08 21 let's just agree on what we think's going to happen.

11:08 22 He's going to click -- he's now on the third  
11:08 23 level of the hierarchy. He's on the third item down.  
11:08 24 He's not going to click yet, please. And he's over  
11:08 25 Timing and Measurements.

11:08 1 Do you see that?

11:08 2 A. Yes.

11:08 3 Q. Okay. Now, when he clicks this, what's going  
11:08 4 to happen is this menu structure's going to collapse;  
11:08 5 is that right?

11:08 6 A. Yes.

11:08 7 Q. And then there's going to be created a series  
11:08 8 of links, a sequence of links across the top of the  
11:08 9 page, just below the top nav; is that right?

11:08 10 A. Yes.

11:08 11 Q. Okay. Great.

11:08 12 MR. DEVLIN: Now, don't do it yet,

11:08 13 Mr. Gooden.

11:08 14 BY MR. DEVLIN:

11:08 15 Q. I want to ask you something here. The way we  
11:08 16 got to where Mr. Gooden is now with that mouse hovering  
11:08 17 over that third item of this particular grouping in the  
11:08 18 third level of the hierarchy is he hovered over the  
11:08 19 third item at the first level.

11:09 20 Do you remember that?

11:09 21 The particular -- let me ask you --

11:09 22 MR. DEVLIN: Let's go back, Mr. Gooden,  
11:09 23 to the first level. Okay.

11:09 24 BY MR. DEVLIN:

11:09 25 Q. So when he hovers over the third one of those

11:09 1 items down, it opens up a given menu in the second  
11:09 2 level of the hierarchy, right?

11:09 3 A. Right.

11:09 4 Q. Great.

11:09 5 MR. DEVLIN: Why don't you scroll down  
11:09 6 just one, Mr. Gooden?

11:09 7 Great.

11:09 8 BY MR. DEVLIN:

11:09 9 Q. Now, that opened a second level of the  
11:09 10 hierarchy, right?

11:09 11 A. Right.

11:09 12 Q. But it's a different set of selections than  
11:09 13 the one just above we were hovering over. That's my  
11:09 14 point.

11:09 15 Do you understand me?

11:09 16 A. Yes.

11:09 17 Q. Okay. And likewise, if he went down each of  
11:09 18 these, there'd be a set of selections that is different  
11:09 19 than the other sets of selections you'd get from other  
11:09 20 items in that first level. Fair?

11:09 21 A. Yes.

11:09 22 Q. Great. Thank you.

11:09 23 So let's go back to the third and let's -- and  
11:09 24 same here. When we're at the second level, if he  
11:09 25 hovers on one of those items, that may or may not pull

11:09 1 up an extra menu, correct?

11:09 2 A. Yes.

11:09 3 Q. Some of those are just direct links to a page;  
11:10 4 is that right?

11:10 5 A. Yes.

11:10 6 Q. Okay. And then he can hover over that third  
11:10 7 one, and that opens up a third level, correct?

11:10 8 A. Yes.

11:10 9 Q. Okay. Great.

11:10 10 Now, let me see if I can get this right. If  
11:10 11 Mr. Gooden had hovered over a different item at the  
11:10 12 first level and that opened up a different item in the  
11:10 13 second level -- are you with me so far?

11:10 14 A. Yes.

11:10 15 Q. Then hovering over that might open up a third  
11:10 16 level, right?

11:10 17 A. Yes.

11:10 18 Q. But that third level would be different than  
11:10 19 the one that we're looking at on the screen, given the  
11:10 20 path we took so far to get here, correct?

11:10 21 A. Yes.

11:10 22 Q. Great. Thank you.

11:10 23 THE COURT: Ma'am, you need to -- I  
11:10 24 know -- if I can help you, you need to wait until he's  
11:10 25 done asking a question. When you are kind of

11:10 1 interjecting with yes or no -- I'm having to correct  
11:10 2 you here, I don't mean to -- but we're -- it doesn't  
11:10 3 work as well for us in this setting.

11:10 4 THE WITNESS: I'm so sorry.

11:10 5 THE COURT: No, no. I don't mean to --  
11:10 6 you're just acting normally. And you're -- but I'm  
11:10 7 just saying it'll help keep the record a little clearer  
11:11 8 and help Mr. Devlin and the jury if you can just wait,  
11:11 9 sit on your hands a little bit and let him -- I don't  
11:11 10 mean to chastise you. It'll just help all of us if you  
11:11 11 can wait a little bit.

11:11 12 THE WITNESS: Sure. Sorry about that,  
11:11 13 folks.

11:11 14 MR. DEVLIN: And, ma'am, I got to say I  
11:11 15 know it's partly me also. It's part of the process  
11:11 16 here. I have to ask sometimes really long questions to  
11:11 17 make sure I'm getting the precise question out that I  
11:11 18 need. And I know that's -- it's artificial but it's  
11:11 19 something I need to do. So I know it's not you; it's  
11:11 20 me. All right? Or we're in it together.

11:11 21 BY MR. DEVLIN:

11:11 22 Q. Okay. So I think we've agreed that the  
11:11 23 different choices that you see at a given level of the  
11:11 24 hierarchical menu structure depend on the choices you  
11:11 25 made to get to that particular spot in the level; is

11:11 1 that fair?

11:11 2 A. Yes.

11:11 3 Q. Okay. Thank you so much.

11:11 4 MR. DEVLIN: Now, still -- yet,  
11:11 5 Mr. Gooden.

11:11 6 BY MR. DEVLIN:

11:11 7 Q. When we click on this, we're going to get that  
11:11 8 collapsing menu. We're going to see that series of  
11:12 9 links up at the top. And then we'll see what happens.  
11:12 10 All right? Are you with me?

11:12 11 A. Yes.

11:12 12 Q. Great. We're going to click on it.

11:12 13 MR. DEVLIN: Go ahead, Mr. Gooden. Thank  
11:12 14 you so much.

11:12 15 BY MR. DEVLIN:

11:12 16 Q. All right. Now, would you agree if -- that in  
11:12 17 the Forums website -- now, I'm not -- let me be very  
11:12 18 clear about what I'm going to ask you here. I'm not  
11:12 19 asking you anything right yet about the main website,  
11:12 20 microchip.com, okay?

11:12 21 A. Okay.

11:12 22 Q. And I'm definitely not asking you about the  
11:12 23 new -- the redesigned version. I'm just asking you  
11:12 24 right about Forums right now. So I don't want you to  
11:12 25 feel like I'm trying to catch you on anything, okay?

11:12 1 A. Thank you. That's fair.

11:12 2 Q. Yes. All right. So we're just talking about  
11:12 3 the Forum.

11:12 4 Would you agree that what is there just below  
11:12 5 the top nav, that sequence of links, that that's an  
11:12 6 Active Path that we've been talking about this week --

11:12 7 MR. JENSEN: Objection, Your Honor. This  
11:12 8 calls for expert testimony. He's asking about the  
11:12 9 claim language. And it's beyond the scope of direct.  
11:12 10 Clearly we didn't go on and navigate the Forum site or  
11:13 11 do any of this.

11:13 12 THE COURT: Overruled.

11:13 13 A. Yes. I don't know exactly what Active Path  
11:13 14 is. I haven't heard that term before this trial. But  
11:13 15 from what I understand from sitting in for the last few  
11:13 16 days, I believe what you're saying is an Active Path.  
11:13 17 BY MR. DEVLIN:

11:13 18 Q. Okay. Thank you so much, ma'am.

11:13 19 And that's partly because when we hover over  
11:13 20 one of these links, is it fair to say that's an -- so  
11:13 21 let me just be clear while we are on the record.

11:13 22 So we've got five different links in a  
11:13 23 sequence right there in what we just said was an Active  
11:13 24 Path, right? Five different links?

11:13 25 A. Yes.

11:13 1 Q. Okay. Great.

11:13 2 And if Mr. Gooden hovers over the third of  
11:13 3 those as he's doing now, we see a drop-down menu that  
11:13 4 offers other choices, other items. We'll leave it at  
11:13 5 that. Is that fair?

11:13 6 A. Yes.

11:13 7 Q. Okay. Now, did you --

11:14 8 MR. DEVLIN: Mr. Gooden, do we have those  
11:14 9 screenshots of where -- or can you do them when we're  
11:14 10 going down Forums?

11:14 11 BY MR. DEVLIN:

11:14 12 Q. Let me move on and make it a little simpler.

11:14 13 MR. DEVLIN: That's okay, Mr. Gooden. I  
11:14 14 think we'll stay here.

11:14 15 BY MR. DEVLIN:

11:14 16 Q. Let me just try to summarize a couple of  
11:14 17 things we've seen. We've seen this hierarchical menu  
11:14 18 structure. And then we go through that, we can select  
11:14 19 something, and we get a new page, a collapsed menu, and  
11:14 20 an Active Path. So far so good? Want me to say it  
11:14 21 again?

11:14 22 A. Nope. I'm thinking. Collapsed menu. And we  
11:14 23 get the breadcrumb. Yes.

11:14 24 Q. Thank you.

11:14 25 And when you said "breadcrumb," that's --



11:14 1 you're referring to the thing that we just labeled an  
11:14 2 Active Path. Is that okay? Just trying to make it  
11:14 3 clear for the record.

11:14 4 A. Yes.

11:14 5 Q. Okay. And sometimes in the verbiage of how  
11:14 6 you've operated in the past and so forth, what we were  
11:14 7 calling an -- what we are calling here an Active Path,  
11:15 8 you might still refer to as a breadcrumb. Maybe a  
11:15 9 breadcrumb with drop-down or a breadcrumb with hover;  
11:15 10 is that right?

11:15 11 A. Yes. That's right.

11:15 12 MR. JENSEN: Objection, Your Honor. This  
11:15 13 is the claim language. He's asking her to do claim  
11:15 14 construction, to interpret the claim language. She  
11:15 15 said she hasn't read the patents. She's not an expert.

11:15 16 THE COURT: If she feels she's unable to  
11:15 17 answer the question, she can say, I don't know.

11:15 18 Overruled.

11:15 19 MR. DEVLIN: Thank you, Your Honor.

11:15 20 BY MR. DEVLIN:

11:15 21 Q. And let me just make one other thing clear,  
11:15 22 because I'm really not trying to catch you here, okay?  
11:15 23 You're not a patent expert; is that right?

11:15 24 A. I'm not.

11:15 25 Q. Okay. Great.

11:15 1 So we're going to talk to someone else who's a  
11:15 2 technical expert from Microchip. You know that, right?

11:15 3 A. Yes.

11:15 4 Q. Okay. And then we'll all have a chance to  
11:15 5 argue again and tie all this up with the evidence and  
11:15 6 the law later on, right?

11:15 7 A. Right.

11:15 8 Q. Okay. Great. Thank you so much.

11:15 9 Another thing we saw is this concept of  
11:15 10 truncation.

11:15 11 Do you remember seeing that earlier in the  
11:15 12 trial?

11:15 13 A. Yes.

11:15 14 Q. And let's just confirm with you that what we  
11:15 15 saw before is exactly happening. So before Mr. Gooden  
11:16 16 does it -- he's now hovering over the fourth of those  
11:16 17 links in that Active Path. And he's going to click  
11:16 18 that. And can you tell us what's going to happen when  
11:16 19 he does that? If he clicks that?

11:16 20 A. I don't know. Click it.

11:16 21 Q. What's that?

11:16 22 A. I don't know. Click it.

11:16 23 Q. All right. Let's see.

11:16 24 MR. DEVLIN: Let's click it. All right.

11:16 25 BY MR. DEVLIN:

11:16 1 Q. So one thing happened. We went to a new page,  
11:16 2 right?

11:16 3 A. Uh-huh.

11:16 4 Q. Okay.

11:16 5 MR. DEVLIN: Mr. Gooden, if you could  
11:16 6 just hit the back button on the browser.

11:16 7 Thank you.

11:16 8 BY MR. DEVLIN:

11:16 9 Q. You see how the link that he hit was called  
11:16 10 Peripheral/Core Independent Peripherals?

11:16 11 A. Yes.

11:16 12 Q. Okay. This was on the page we just came from.  
11:16 13 And then there was another link in that sequence to the  
11:16 14 right of it.

11:16 15 Do you see that?

11:16 16 A. Yes.

11:16 17 Q. Okay.

11:16 18 MR. DEVLIN: So now just hit the forward  
11:16 19 button, Mr. Gooden.

11:16 20 Thank you.

11:16 21 BY MR. DEVLIN:

11:16 22 Q. Now, this is the result of that maneuver. We  
11:16 23 see that last link in the sequence has now disappeared,  
11:17 24 right?

11:17 25 A. Yes.

11:17 1 Q. Okay. And did you hear that referred to as  
11:17 2 truncation before in the trial?

11:17 3 A. You know, I really don't remember that.

11:17 4 Q. That's okay. That's fine.

11:17 5 But we've confirmed that one of those links  
11:17 6 has now disappeared when we clicked -- sorry. When we  
11:17 7 clicked the fourth link in that sequence in the Active  
11:17 8 Path, we went to a new page and the fifth link  
11:17 9 disappeared; is that fair?

11:17 10 A. Yeah. That's what we saw.

11:17 11 Q. Great. Thank you so much.

11:17 12 All right. Let's go to the -- that video that  
11:17 13 you looked at.

11:17 14 MR. DEVLIN: That was, I believe,  
11:17 15 Defendant's Exhibit 463.

11:17 16 BY MR. DEVLIN:

11:17 17 Q. I want to talk about that.

11:17 18 Okay. So this video, just so we're all clear,  
11:17 19 this is the Microchip --

11:17 20 MR. DEVLIN: Maybe this starts in and  
11:17 21 someone goes to the microchip.com website. There we  
11:17 22 go. All right.

11:17 23 BY MR. DEVLIN:

11:17 24 Q. Someone types in microchip.com, and then we're  
11:18 25 at the microchip.com main website, right here on this

11:18 1 video on the screen right now.

11:18 2 A. Yes.

11:18 3 Q. Okay. And this was at a time when the  
11:18 4 microchip.com website also still had those breadcrumbs  
11:18 5 with drop-down, right?

11:18 6 A. During the transition we had some of the new  
11:18 7 pages and some of the old pages on the website. Yes.

11:18 8 Q. Okay. Thank you.

11:18 9 And so -- and this video's actually, you said,  
11:18 10 in that transition, right?

11:18 11 A. Yes.

11:18 12 Q. So some of the stuff might be new, and some of  
11:18 13 the stuff might be old, right?

11:18 14 A. That's right.

11:18 15 Q. Okay. So what you did, though, in the  
11:18 16 video -- and we can play it -- is we have a menu  
11:18 17 structure. And those open up a set of items. And  
11:18 18 hovering over one opens up another set of items, right?

11:19 19 A. Uh-huh.

11:19 20 Q. Okay.

11:19 21 MR. DEVLIN: And then you can click on  
11:19 22 that, is what happens in the video. All right. Let's  
11:19 23 pause there for a second.

11:19 24 Now, if you can run the video back just a  
11:19 25 few seconds, Mr. Gooden. Backwards. Right till we get

11:19 1 to there. That's perfect. Click on that. And stop  
11:19 2 there.

11:19 3 Awesome. Thank you.

11:19 4 BY MR. DEVLIN:

11:19 5 Q. So what's happened here is the selection's  
11:19 6 been made, and we've gone to something that is a new  
11:19 7 page, right?

11:19 8 A. Right.

11:19 9 Q. And that page has -- we'll at least agree  
11:19 10 right now it's a breadcrumb at some level, right?

11:19 11 A. Yeah.

11:19 12 Q. Okay. And the person making this video, where  
11:19 13 their mouse is right now, they left it right in the  
11:19 14 middle -- well, they didn't leave it. That was where  
11:19 15 they clicked from. That was where the mouse was when  
11:19 16 they clicked. So that's why that little hand is still  
11:19 17 right in the middle.

11:19 18 Do you see that?

11:19 19 A. Yeah.

11:19 20 Q. Okay. And then what happens in the video is  
11:19 21 it kind of goes up, and I think you were making the  
11:19 22 point that some of the labeling in what's this -- I'm  
11:20 23 going to call it a breadcrumb still, that was different  
11:20 24 than the labeling of the selections along the way?

11:20 25 A. That's right.

11:20 1 Q. Okay. Now, I just want to confirm that you  
11:20 2 don't know something. So that's the nature of my next  
11:20 3 question, okay?

11:20 4 Is it fair to say that you don't know whether  
11:20 5 the issue of those labels matching up has any bearing  
11:20 6 on the question of infringement here?

11:20 7 That's not something you know about; is that  
11:20 8 fair?

11:20 9 A. I haven't read the infringement document. So  
11:20 10 no.

11:20 11 Q. Great. I'm just confirming that you're not  
11:20 12 the person to talk to about that.

11:20 13 A. Okay.

11:20 14 Q. So I'll talk to someone else. Okay. Thank  
11:20 15 you.

11:20 16 But that was the point you were making, is  
11:20 17 that the labels in this -- in this breadcrumb --

11:20 18 A. Yeah.

11:20 19 Q. -- were different than the labels along the  
11:20 20 way. That's why you went through this video?

11:20 21 A. Yeah.

11:20 22 Q. Okay. Great.

11:20 23 So I'll talk with someone later about how  
11:20 24 meaningful that may or may not be.

11:20 25 A. Okay.

11:20 1 Q. All right. All right. Thank you. That's  
11:21 2 what I'm getting at.

11:21 3 Now, if we continue this video --

11:21 4 MR. DEVLIN: Is this the end? Maybe  
11:21 5 scroll back a few seconds, Mr. Gooden.

11:21 6 And just play the whole thing through  
11:21 7 without pausing it.

11:21 8 BY MR. DEVLIN:

11:21 9 Q. There goes that mouse. Just -- whoops.  
11:21 10 Sorry.

11:21 11 MR. DEVLIN: Play the whole thing  
11:21 12 through. Great.

11:21 13 BY MR. DEVLIN:

11:21 14 Q. So we're playing. There goes that mouse.  
11:21 15 It's getting really near those breadcrumbs, but whoever  
11:21 16 made this video was very careful not to hover over  
11:21 17 them, right?

11:21 18 A. I wouldn't characterize it as that. They just  
11:21 19 didn't go up to the breadcrumb.

11:21 20 Q. They just didn't get there?

11:21 21 A. Yeah.

11:21 22 Q. Okay. Fair enough.

11:21 23 If they had gotten to that breadcrumb and  
11:21 24 hovered over where it says "USB," what would've  
11:21 25 happened?



11:21 1 A. They would have seen a drop-down menu.

11:21 2 Q. Okay. So that's an active link then, that  
11:21 3 USB, as we've been talking about it this week?

11:21 4 MR. JENSEN: Objection, Your Honor.  
11:21 5 Again, this is the claim language.

11:21 6 A. No.

11:21 7 THE COURT: Overruled.

11:21 8 A. No.

11:21 9 BY MR. DEVLIN:

11:21 10 Q. You don't think that's an active link?

11:21 11 A. I wouldn't characterize that as an active  
11:22 12 link. No.

11:22 13 Q. You would characterize it as a breadcrumb with  
11:22 14 a drop-down?

11:22 15 A. Yeah. It's a static path.

11:22 16 Q. Oh, I'm sorry. Let's talk about that in a  
11:22 17 second.

11:22 18 When you say "static path," are you talking  
11:22 19 about the collection of the links that make up that  
11:22 20 breadcrumb, or are you talking about something  
11:22 21 different?

11:22 22 A. Yeah. The code that we enter into the system  
11:22 23 to display those links are static.

11:22 24 Q. Got you.

11:22 25 We're going to get to that in a minute, okay?

11:22 1 A. Okay.

11:22 2 Q. And what you're -- just so we're clear, what  
11:22 3 you're talking about is the collection of those links  
11:22 4 that are in a sequence together. That code that puts  
11:22 5 those things in there, that's static code.

11:22 6 That's what you're saying?

11:22 7 A. That's right.

11:22 8 Q. Great. We're going to talk about that in just  
11:22 9 a moment.

11:22 10 What I'm saying, though, is each of those  
11:22 11 links individually, it has functionality right now  
11:22 12 other than just clicking on it and going back to the  
11:23 13 page that the actual label identifies?

11:23 14 A. They're links. Links go to pages.

11:23 15 Q. Right. You could click through where it says  
11:23 16 "USB"; it would take you to a page, right?

11:23 17 A. Yeah.

11:23 18 Q. Okay. But there's other functionality that  
11:23 19 that can do. If you hover over it, it has a drop-down,  
11:23 20 right?

11:23 21 A. Yes.

11:23 22 Q. And those drop-downs have other selections,  
11:23 23 right?

11:23 24 A. Yes.

11:23 25 Q. Okay. Great. That's all I wanted to see if

11:23 1 we could agree on.

11:23 2 Let's talk about this issue of static and  
11:23 3 dynamic, all right?

11:23 4 What do you mean by "static"?

11:23 5 Let's start there. Let's go back to this  
11:23 6 issue. Let me be a little more clear here.

11:23 7 We're going to go back to the issue you and I  
11:23 8 were talking about a minute ago, which is that this  
11:23 9 page has code in it that will define each of those  
11:23 10 links in that sequence in that breadcrumb, right?

11:23 11 A. Okay.

11:23 12 Q. Okay. Great.

11:23 13 Now, let me ask you this again. It'll be --  
11:23 14 this is one of those making sure you're not the person  
11:23 15 to talk to questions, all right?

11:24 16 A. Okay.

11:24 17 Q. You don't know, one way or the other, the  
11:24 18 impact of whether -- the way that this breadcrumb is  
11:24 19 created with static code, you don't know, one way or  
11:24 20 the other, whether that impacts the issue of  
11:24 21 infringement here.

11:24 22 That's not you, fair?

11:24 23 A. I'm not an infringement person, attorney,  
11:24 24 specialist. No.

11:24 25 Q. Great. Thanks so much.

11:24 1 Okay. Do you remember, one way or the  
11:24 2 other -- let me just ask you: If someone on this page,  
11:24 3 back at the time this video was created, if they had  
11:24 4 clicked Interface and Connectivity -- see that second  
11:24 5 link in the sequence?

11:24 6 A. Yes.

11:24 7 Q. If they had clicked that, clicked through,  
11:25 8 they would have gone to that page, right, Interface and  
11:25 9 Connectivity?

11:25 10 A. I don't know.

11:25 11 Q. You don't know?

11:25 12 A. I don't know because I don't know if that had  
11:25 13 a link on it or not. I can't tell from this screen.

11:25 14 Q. Okay. Great. No problem.

11:25 15 Let me just ask you this generally: Remember  
11:25 16 in the Forum section when we clicked one of those links  
11:25 17 that went to a page and the rest of the sequence of  
11:25 18 links to the right was eliminated?

11:25 19 Do you remember that?

11:25 20 A. Yes.

11:25 21 Q. Did the main website, not the current version,  
11:25 22 not the redesigned version, but the -- what we call the  
11:25 23 original or older version, would that eliminate  
11:25 24 right-hand links and the sequence in the same way?

11:25 25 Do you remember that?

11:25 1 A. I don't remember if it did or not.

11:25 2 Q. Okay. If Mr. Sherwood had said that he'd seen  
11:25 3 that happen, would you, sitting here today, be in a  
11:25 4 position to say he was wrong?

11:25 5 MR. JENSEN: Objection. This calls for  
11:25 6 speculation, something that their expert didn't even  
11:25 7 say, and she already said she didn't know.

11:26 8 THE COURT: Sustained.

11:26 9 MR. DEVLIN: I'm not sure that's fully  
11:26 10 accurate, but we shall see.

11:26 11 Okay. Let's talk about -- let's talk  
11:26 12 about me taking off my glasses and reading my notes.

11:26 13 BY MR. DEVLIN:

11:26 14 Q. You said that you're very familiar in your --  
11:26 15 I wrote that down, that's a quote -- "very familiar"  
11:26 16 with the microchip.com website.

11:26 17 Do you remember that?

11:26 18 A. That's right.

11:26 19 Q. Okay. And that's because you -- you're on it  
11:26 20 regularly, I take it?

11:26 21 A. That's right.

11:26 22 Q. And I suppose a lot of Microchip employees go  
11:26 23 to that website to get information; is that fair?

11:26 24 A. That's right.

11:26 25 Q. Okay. And that happens in a testing process

11:26 1 before you roll out any new page, right?

11:26 2 A. That's right.

11:26 3 Q. That happened for the redesign certainly,  
11:26 4 correct?

11:26 5 A. Yes.

11:26 6 Q. And it happened for the -- when you went from  
11:26 7 those side links to what we're calling the original  
11:26 8 version, people would have tested that at some point?

11:27 9 A. You know, that happened right before me. So I  
11:27 10 wasn't as familiar with that as I am with the rest of  
11:27 11 the functions of the site.

11:27 12 Q. Sure. And I wasn't trying to get at the  
11:27 13 function.

11:27 14 I'm just saying, whenever you're going to roll  
11:27 15 out some new version, it's going to get tested, fair?

11:27 16 A. Yeah.

11:27 17 Q. And then as you said, just in the normal  
11:27 18 course of activities, you and others at Microchip will  
11:27 19 go to the microchip.com website for a variety of  
11:27 20 reasons, fair?

11:27 21 A. That's right.

11:27 22 Q. Thank you.

11:27 23 Let me talk about this issue of servers, okay,  
11:27 24 and the location of stuff and how all this works, okay?

11:27 25 A. Uh-huh.

11:27 1 Q. And let me just make sure I understand it and  
11:27 2 that the record's clear. I think we're going to be  
11:27 3 agreeing on a lot on this one, but you let me know if  
11:27 4 we're not, okay?

11:27 5 A. Sure.

11:27 6 Q. Thanks.

11:27 7 So the way that the sort of architecture of  
11:27 8 what's happening is there's a microchip.com server or  
11:28 9 set of servers in the U.S., right?

11:28 10 A. There are many. Yes.

11:28 11 Q. Okay. And when you're going to make any  
11:28 12 update to the code, what happens is it happens on the  
11:28 13 microchip.com server and then it gets pushed out to  
11:28 14 these Akamai servers, right?

11:28 15 A. Yes.

11:28 16 Q. Okay. So the code starts -- and by the way,  
11:28 17 the code I'm talking about is the -- what we've heard  
11:28 18 as HTML code, but in general what we're talking about  
11:28 19 is the stuff that's going to go down to a user's  
11:28 20 browser.

11:28 21 That's the code we're talking about now,  
11:28 22 right?

11:28 23 A. That's some of it. Yes.

11:28 24 Q. Okay. Can -- when you say "that's some of  
11:28 25 it," what do you mean?

11:28 1 A. Well, some of the code stays on the server  
11:28 2 side and some of it, you know, goes out to the client  
11:28 3 side. Most of the site goes client side, which is any  
11:28 4 laptop or, you know, a tablet. You have your phone.

11:29 5 Q. Thanks.

11:29 6 So microchip.com will also push out to Akamai  
11:29 7 stuff that might stay on Akamai servers, you mean, is  
11:29 8 what you're saying?

11:29 9 A. Most of it. Yeah.

11:29 10 Q. Great. And will also push out to Akamai the  
11:29 11 code that will go down to the client device, the  
11:29 12 browser, laptop, whatever, right?

11:29 13 A. Yeah.

11:29 14 Q. Okay. So the point of all this is to say it  
11:29 15 starts at the microchip.com server. The microchip.com  
11:29 16 server provides that code to the Akamai servers. Or to  
11:29 17 Akamai; Akamai may distribute it to its servers, right?

11:29 18 A. Yeah. So we maintain our code on servers so  
11:29 19 that we can keep a true record of what we have. And  
11:29 20 then we share that code. We copy it out to all of  
11:29 21 Akamai's servers worldwide. So when you're in another  
11:29 22 country, you go to a local server.

11:29 23 Q. Thank you.

11:29 24 And so you just said something where I was  
11:29 25 going in a minute, which is that Microchip controls the



11:29 1 code. You know, Akamai's not making edits to  
11:30 2 microchip.com website, the content of it, right?

11:30 3 MR. JENSEN: Objection. Relevance, Your  
11:30 4 Honor. This goes to a joint infringement issue, which  
11:30 5 is not in the case.

11:30 6 MR. DEVLIN: It actually goes to the  
11:30 7 opposite. Its goes to direct infringement, which is in  
11:30 8 the case.

11:30 9 THE COURT: Overruled.

11:30 10 MR. DEVLIN: Thank you.

11:30 11 A. Could you repeat the question?

11:30 12 BY MR. DEVLIN:

11:30 13 Q. Sure. And I'm sorry. Something's in my  
11:30 14 throat, and I don't want to cough too loud on  
11:30 15 everybody.

11:30 16 Where was I? Oh, Microchip is the entity that  
11:30 17 controls the content and layout and design of its  
11:30 18 website. You guys make those changes, and you make  
11:30 19 them on the microchip.com servers here, right?

11:30 20 A. We write the code that gets copied to the  
11:30 21 Akamai servers.

11:30 22 Q. Got it. And it gets copied from the  
11:30 23 microchip.com servers here in the U.S., correct?

11:30 24 A. Yeah.

11:30 25 Q. Thank you.

11:30 1 All right. Is it fair to say that you're not  
11:31 2 the person to talk to about the legal consequences of  
11:31 3 that with respect to this case?

11:31 4 A. Yes.

11:31 5 Q. Excellent.

11:31 6 I want to talk about --

11:31 7 MR. DEVLIN: If we could pull up  
11:31 8 Plaintiffs' Exhibit 96.

11:31 9 Thank you. And if we could go to page --  
11:31 10 BY MR. DEVLIN:

11:31 11 Q. Oh, sorry. Let's center ourselves. This is a  
11:31 12 Microchip presentation you spoke about on your direct  
11:31 13 testimony, right?

11:31 14 A. Yeah. I believe so. I can't see where  
11:32 15 Grace's name is, but I believe so.

11:32 16 Q. Okay.

11:32 17 MR. DEVLIN: And let's go to Page 36,  
11:32 18 Mr. Gooden.

11:32 19 BY MR. DEVLIN:

11:32 20 Q. Do you remember this page?

11:32 21 A. Yes.

11:32 22 Q. Okay. And I want to talk about this  
11:32 23 annotation about --

11:32 24 MR. DEVLIN: Yeah. Right there.

11:32 25 BY MR. DEVLIN:

11:32 1 Q. So let me talk first --

11:32 2 MR. DEVLIN: Actually, you can put that  
11:32 3 down for a second, Mr. Gooden. I'm sorry. I jumped  
11:32 4 the gun.

11:32 5 BY MR. DEVLIN:

11:32 6 Q. I want to talk a little bit first about this  
11:32 7 document. This document was created in, I think it was  
11:32 8 sort of the first half of 2019, if I saw.

11:32 9 Does that sound right?

11:32 10 A. I think it's the fall of 2018.

11:32 11 Q. Fall of 2018, so a little earlier. Okay.

11:32 12 And this was created as part of Microchip  
11:32 13 thinking about what it's going to do with its website,  
11:32 14 right?

11:32 15 A. With microchip.com?

11:32 16 Q. With microchip.com.

11:32 17 A. Yes.

11:32 18 Q. And it's fair to say that's a big deal,  
11:32 19 correct?

11:32 20 A. Yes.

11:32 21 Q. It's a big decision to be made, right?

11:32 22 A. Yes.

11:32 23 Q. Lot of people involved?

11:32 24 A. Yes.

11:32 25 Q. Business purpose going on here?

11:33 1 A. I'm sorry. Business --

11:33 2 Q. There's a business purpose to having this  
11:33 3 conversation?

11:33 4 A. Yes.

11:33 5 Q. Okay. And as part of that, someone put in  
11:33 6 this presentation this statement about what revenue  
11:33 7 microchip.com drives through the e-commerce portal,  
11:33 8 right?

11:33 9 A. Yes.

11:33 10 Q. Now, at least at the time of your deposition  
11:33 11 you weren't really sure where that came from, right?

11:33 12 A. I'm still not exactly sure where that number  
11:33 13 came from.

11:33 14 Q. Haven't gone back and -- did you try to  
11:33 15 investigate further after your deposition?

11:33 16 A. Yes.

11:33 17 Q. You did. Still couldn't figure it out?

11:33 18 A. No.

11:33 19 Q. Okay. That's all right.

11:33 20 So but I think we can agree that whoever did  
11:33 21 it knew that this was a big deal, what people were  
11:33 22 trying to do with the website?

11:33 23 A. Yes.

11:33 24 Q. All right. And they were going to work hard  
11:33 25 and do their best to try to give accurate information

11:33 1 to the decision makers; is that fair?

11:33 2 A. You know, sometimes our management doesn't  
11:34 3 want to spend money. So sometimes you have to tell the  
11:34 4 best-case scenario. So yeah. They would have used  
11:34 5 their best estimate on the information.

11:34 6 Q. Right. So you mean the person doing this is  
11:34 7 going to give their best estimate?

11:34 8 A. Yeah.

11:34 9 Q. Yeah. Thank you. Okay.

11:34 10 MR. DEVLIN: And let's pull that up now  
11:34 11 again, Mr. Gooden.

11:34 12 BY MR. DEVLIN:

11:34 13 Q. This is this \$215,000 a day that microchip.com  
11:34 14 drives through the e-commerce portal.

11:34 15 Do you see that?

11:34 16 A. I see that. And that number seems a little  
11:34 17 high to me for that time frame. We get to have  
11:34 18 quarterly meetings where the CEO will stand up and talk  
11:34 19 to us, and they'll tell us about our sales and how  
11:34 20 we're doing with the competition and that kind of  
11:34 21 thing.

11:34 22 So over time I've seen sales numbers. And  
11:34 23 that number seems a little bit high to me. It must  
11:34 24 have been the best days of the previous time period  
11:35 25 that was used to come up with the number.

11:35 1 Q. Okay. You say it must have been. Are you  
11:35 2 sure about that?

11:35 3 A. Yeah. Because you want to make the best case  
11:35 4 you can to get funding for a project you want to do.  
11:35 5 So you want to use the information you can use, right?

11:35 6 Q. What I'm trying to confirm is, I think you  
11:35 7 just said this must have been the highest time period  
11:35 8 of the revenues for the -- for what was going on.

11:35 9 Did I understand you right?

11:35 10 A. It seems pretty high to me. Yeah.

11:35 11 Q. It seems high to you. You didn't do this  
11:35 12 work?

11:35 13 A. No.

11:35 14 Q. This was not your work?

11:35 15 A. No. I believe it was Grace Ramon.

11:35 16 Q. What's that?

11:35 17 A. I believe it was Grace Ramon, the person  
11:35 18 before me.

11:35 19 Q. Grace Ramon. She's not -- she's no longer  
11:35 20 with the company?

11:35 21 A. That's right.

11:35 22 Q. I see. Okay.

11:35 23 Do -- you still ever in contact with her?

11:35 24 A. No. I'm not.

11:35 25 Q. She's not. Did you ever try to get in contact

11:35 1 with her during the case?

11:35 2 A. No. I haven't.

11:35 3 Q. You don't know if she's alive and well or  
11:35 4 anything like that?

11:35 5 A. No. I don't.

11:35 6 Q. Okay. Thank you.

11:36 7 You, in your direct, you mentioned a lot of  
11:36 8 money that Microchip makes that has nothing to do with  
11:36 9 the Internet?

11:36 10 A. That's right.

11:36 11 Q. Right? Bulk orders from big companies where  
11:36 12 you've got other highly-detailed and sophisticated  
11:36 13 sales channels that do not require going onto  
11:36 14 microchip.com at all; is that fair?

11:36 15 A. That's fair.

11:36 16 Q. Okay. And now you understand that none of  
11:36 17 that sort of revenue is even being looked at for  
11:36 18 purposes of damages in this case?

11:36 19 A. That's right.

11:36 20 Q. Okay. The only revenue that's being looked at  
11:36 21 for purposes of damages is this revenue that  
11:36 22 Microchip's own documents identify as being driven from  
11:36 23 microchip.com through the e-commerce portal.

11:36 24 You understand that, correct?

11:37 25 A. I understand.

11:37 1 Q. Okay. Just to be clear, the e-commerce portal  
11:37 2 is microchipdirect.com, correct?

11:37 3 A. That's right.

11:37 4 Q. Okay. Thank you.

11:37 5 A. Can I make another comment on this slide?

11:37 6 Q. Well, let me try to move on, ma'am, because  
11:37 7 your attorney's going to have a chance to do that.

11:37 8 A. Okay.

11:37 9 Q. I just have limits on my time.

11:37 10 A. Sure.

11:37 11 Q. I'm going to try to move myself along.

11:37 12 A. Thank you.

11:37 13 Q. Yeah. But I'm not trying to hold you back, so  
11:37 14 I encourage your lawyer to come up and ask you about  
11:37 15 that, and then you clear it up on his time.

11:37 16 Is that okay?

11:37 17 A. Sure. Uh-huh.

11:37 18 Q. Thank you. Thank you so much.

11:37 19 Let's talk about growth for a second while we  
11:37 20 have this up. You're saying that before late 2018 or  
11:37 21 early 2019, whenever this document was from, before  
11:37 22 then the company was growing, right?

11:37 23 A. Uh-huh.

11:37 24 Q. And I think you said it has three times the  
11:38 25 revenue from 2014 now; is that right?



11:38 1 A. That's right.

11:38 2 Q. Okay. Now, did all of that growth happen  
11:38 3 between 2014 and 2018?

11:38 4 A. No.

11:38 5 Q. Okay. So after this number was identified and  
11:38 6 placed in this business-oriented document, the company  
11:38 7 continued to grow?

11:38 8 A. Well, let me correct what I just said. Most  
11:38 9 of the acquisitions, as I understand it, were --  
11:38 10 financially, the paperwork was completed by the end of  
11:38 11 2018, I believe. But yeah, the company continued to  
11:38 12 grow after 2018.

11:38 13 Q. Okay. Thank you.

11:38 14 Bear with me. When I'm looking down and  
11:39 15 crossing something off, that means we're moving faster.  
11:39 16 So please bear with me.

11:39 17 Thank you.

11:39 18 A. I'm sure the juries appreciate that too.

11:39 19 Q. During your direct testimony you mentioned --

11:39 20 MR. DEVLIN: Thank you, Mr. Gooden.

11:39 21 BY MR. DEVLIN:

11:39 22 Q. You mentioned that the purpose of  
11:39 23 microchip.com was informational. Remember that?

11:39 24 A. Yes. That's right.

11:39 25 Q. What'd you mean by that?

11:39 1 A. We provide a lot of information, you know. I  
11:39 2 told you that each silicon chip has a datasheet, and  
11:39 3 sometimes they have another document called an errata.  
11:39 4 And the errata is just corrections to the original  
11:39 5 document.

11:39 6 Well, we have like 40,000 documents on our  
11:39 7 website. It's huge.

11:39 8 Q. And lots of other pages as well, fair?

11:39 9 A. Web pages, in addition to the documents.

11:39 10 Q. Got it. Thank you.

11:39 11 Okay. And the purpose, though, is to be a  
11:39 12 resource of information for --

11:40 13 A. Right.

11:40 14 Q. -- customers and potential customers?

11:40 15 A. That's right.

11:40 16 Q. Thank you.

11:40 17 And, you know, that was my fault. I paused in  
11:40 18 the middle of that question, so I apologize for that.

11:40 19 You mentioned some problems. You had the old  
11:40 20 house that's about to collapse, and then you got the  
11:40 21 new house. Remember that?

11:40 22 Okay.

11:40 23 And you had identified a bunch of problems,  
11:40 24 loading issues, stability of the code. Remember that?

11:40 25 A. Yes.

11:40 1 Q. Those existed before the transition to what  
11:40 2 we're calling the original website here, what's accused  
11:40 3 on the main web page, right?

11:40 4 A. Those problems have happened prior to the coat  
11:40 5 of paint and throughout the coat of paint, until we  
11:40 6 redesigned the site.

11:40 7 Q. Understood. That's exactly what I'm getting  
11:40 8 at though.

11:40 9 A. Yeah.

11:40 10 Q. All right. Thank you. That's great.

11:40 11 You talked about why you implemented -- let  
11:41 12 me -- let's find words that you're okay with, okay?

11:41 13 A. Okay.

11:41 14 Q. We -- on the redesigned main website, which is  
11:41 15 the current version, there's a breadcrumb, correct?

11:41 16 A. Yes.

11:41 17 Q. And it has no drop-down functionality, right?

11:41 18 A. Yes.

11:41 19 Q. And in the original version of the main  
11:41 20 website, there was what we called a breadcrumb and it  
11:41 21 had drop-down, right?

11:41 22 A. The coat of paint site had that. Yes.

11:41 23 Q. Okay. Give me a word that you're comfortable  
11:41 24 with for that functionality, where you have a  
11:41 25 breadcrumb that has drop-down. I just want a label

11:41 1 that we can use as we discuss it.

11:41 2 A. Yeah. Let's just use breadcrumb. Everybody  
11:41 3 else seems to understand that.

11:41 4 Q. Well, I need to distinguish between  
11:41 5 breadcrumbs that don't have a drop-down versus ones  
11:41 6 that do. And that's what I'm trying to find a label  
11:42 7 for that --

11:42 8 A. Well, let's call it a secondary navigation.

11:42 9 Q. Okay.

11:42 10 A. Is that okay?

11:42 11 Q. Are breadcrumbs in general an example of  
11:42 12 secondary navigation?

11:42 13 A. You could call them that.

11:42 14 Q. So then that's not going to work, because I  
11:42 15 need something that's going to distinguish between  
11:42 16 breadcrumbs that don't have drop-down and breadcrumbs  
11:42 17 that do.

11:42 18 How can we label for us, in a way that you're  
11:42 19 happy, the breadcrumbs that do have drop-down that  
11:42 20 distinguishes it from the breadcrumbs that don't?

11:42 21 A. What do you want to call it?

11:42 22 Q. How about breadcrumb with drop-down? Is that  
11:42 23 okay?

11:42 24 A. That sounds fine.

11:42 25 Q. All right. We'll do that.

11:42 1 I don't want to create a label that your  
11:42 2 counsel's going to get upset with. That's what I'm  
11:42 3 trying to do, okay?

11:42 4 A. Okay.

11:42 5 Q. Breadcrumb with drop-down. All right.

11:42 6 So I think you said in your direct that you  
11:42 7 decided to implement breadcrumb with drop-down because  
11:42 8 it was happening on some sites; is that right?

11:42 9 A. That's right.

11:42 10 Q. You were going to try it out. That's what you  
11:42 11 said?

11:42 12 A. That's right.

11:42 13 Q. Okay. Now, fair to say that Microchip is a  
11:43 14 sophisticated company?

11:43 15 A. Yes.

11:43 16 Q. All right. You're not -- you don't just copy  
11:43 17 things for fads; is that fair?

11:43 18 A. I don't copy things for -- what was that word?

11:43 19 Q. Fad, f-a-d? Frank, Ann, David.

11:43 20 A. Oh, fad.

11:43 21 Q. Fad.

11:43 22 A. So with the Internet, you try different  
11:43 23 things. There's so many changes. And honestly, you  
11:43 24 just have try it out to see if it's going to resonate  
11:43 25 with your customers.

11:43 1 Q. Okay. But would you agree or disagree? Would  
11:43 2 you say that Microchip goes along with fads, or would  
11:43 3 you say that's not really a fair way to put it?

11:43 4 A. That's not a fair way to put it.

11:43 5 Q. Thank you.

11:43 6 Let's talk a little bit -- sorry to hop  
11:44 7 around, but I want to go back to the Forum section a  
11:44 8 little bit.

11:44 9 And you had mentioned that Microchip didn't --  
11:44 10 doesn't write the software. You acquired this software  
11:44 11 package; is that right?

11:44 12 A. Right. We purchased the software license.

11:44 13 Q. Okay. When you say "purchased the license,"  
11:44 14 that's from that ASP Playground?

11:44 15 A. That's right.

11:44 16 Q. Thanks so much.

11:44 17 Now, what they give to you is not exactly what  
11:44 18 the Forum section looks like, right?

11:44 19 A. It's a software package.

11:44 20 Q. And then -- but Microchip has to make some  
11:44 21 choices and to modify it in certain ways for your own  
11:44 22 purposes, correct?

11:44 23 A. There's some what they call configurations.

11:44 24 Q. Thank you. That was the word I was going to  
11:44 25 use next.

11:44 1 So what happens is they give you a software  
11:44 2 package of that certain functionality, and then  
11:44 3 Microchip configures that software package for its use,  
11:44 4 correct?

11:44 5 A. I understand it -- I understand that to be  
11:44 6 true. I don't work a lot -- I've never worked in Forum  
11:45 7 code. So I don't know exactly what they did.

11:45 8 Q. Great. And I won't ask you, because you're  
11:45 9 not the, you know, the person responsible for it, but I  
11:45 10 just wanted to confirm that that does, in fact, happen  
11:45 11 and it did, in fact, happen here.

11:45 12 Without going into the details of how it was  
11:45 13 configured, Microchip did configure that Forum software  
11:45 14 for its purposes here, right?

11:45 15 A. We would have added things like the Microchip  
11:45 16 logo and names of categories in the system.

11:45 17 Q. Names of the categories like that appear --

11:45 18 A. Uh-huh.

11:45 19 Q. -- on those links and so forth, right?

11:45 20 A. That's about it.

11:45 21 Q. Okay. Thank you.

11:45 22 How long have you known about the Salesforce  
11:45 23 option?

11:45 24 A. Maybe just the last few months.

11:45 25 Q. Uh-huh. Were there other Forum -- you've seen

11:45 1 other Forums available on the Internet over the years?

11:45 2 A. Yeah.

11:46 3 Q. Okay.

11:46 4 A. But only recently, I should add that. I  
11:46 5 haven't really looked into that software before.

11:46 6 Q. You haven't looked into Forum software  
11:46 7 specifically for Microchip before.

11:46 8 Did I get that right?

11:46 9 A. That's right. That's what I mean.

11:46 10 Q. Thank you.

11:46 11 That \$215,000-a-day number, that appears on at  
11:46 12 least one other report that was circulated during that  
11:46 13 period of investigating or evaluating the redesign,  
11:46 14 right?

11:46 15 Remember that?

11:46 16 A. I remember it on two presentations, but they  
11:46 17 were both done by Grace Ramon.

11:46 18 Q. Okay. Thank you.

11:46 19 We've talked about the server for the  
11:47 20 microchip.com main page.

11:47 21 Now, the server for the Forum section in the  
11:47 22 same way, that's also in the United States, right?

11:47 23 A. Let me think. The Forums software, I believe,  
11:47 24 is hosted on Microsoft operating system servers in  
11:48 25 Chandler.



11:48 1 Q. Chandler, Arizona?

11:48 2 A. Arizona.

11:48 3 Q. Okay. And do you use Akamai to serve that or  
11:48 4 host that at all?

11:48 5 A. I don't know.

11:48 6 Q. You don't know?

11:48 7 A. I don't use that system.

11:48 8 Q. Okay. But it at least starts in -- or it's  
11:48 9 hosted primarily at, you know, at the outset, at the  
11:48 10 start of -- the center of the architecture, as it were,  
11:48 11 in Chandler, Arizona?

11:48 12 A. Yes. I believe so.

11:48 13 Q. Thank you.

11:48 14 I want to talk about the process of the  
11:49 15 redesign and the implementation of that --

11:49 16 A. Sure.

11:49 17 Q. -- over time.

11:49 18 Okay. So you're aware that even as of  
11:49 19 November or December of last year there were still  
11:49 20 pages that had not been redesigned?

11:49 21 A. It's possible that some of the old pages could  
11:49 22 have still been on the Internet.

11:49 23 MR. DEVLIN: If we could look at  
11:49 24 Plaintiffs' Exhibit 35, which I believe is in evidence.

11:49 25 BY MR. DEVLIN:

11:49 1 Q. Do you see this is --

11:49 2 MR. DEVLIN: If we could just pull up  
11:49 3 that -- and whole photo. Yeah.

11:49 4 Actually, I'd love the -- there we go.  
11:50 5 Thanks.

11:50 6 BY MR. DEVLIN:

11:50 7 Q. So you recognize this as a page from  
11:50 8 microchip.com website, right?

11:50 9 A. The old website.

11:50 10 Q. The old -- what we're calling the original or  
11:50 11 old website, right?

11:50 12 A. That's right.

11:50 13 Q. Okay. Great.

11:50 14 And are you aware -- you heard Mr. Sherwood  
11:50 15 say that when he was investigating in November or  
11:50 16 December of last year, he found at least 100 or so  
11:50 17 pages that actually functionally still worked like  
11:50 18 this.

11:50 19 Do you remember that?

11:50 20 A. Yes. And I have no reason to doubt that.  
11:50 21 But, you know, you're talking about a website with  
11:50 22 25,000 pages. So there could have been a few pages  
11:50 23 left.

11:50 24 Q. Sure. Okay.

11:50 25 And is it -- is the thought that this has been

11:50 1 redesigned since then; so in other words, now all of  
11:50 2 these pages have been shifted to the new redesigned  
11:50 3 format?

11:50 4 A. I believe so. I believe they're all  
11:51 5 substantially done. There may be applications that go  
11:51 6 around the website, you know, like the Forums, that are  
11:51 7 not -- that are not at the new -- but when I talk about  
11:51 8 microchip.com, I'm talking about the core of the  
11:51 9 website itself.

11:51 10 Q. Okay. Like this page right here that we're  
11:51 11 looking at?

11:51 12 A. Yes. This page is.

11:51 13 Q. Okay. So this page would have been redesigned  
11:51 14 by now?

11:51 15 A. Yes.

11:51 16 Q. Okay. And in the redesign, it will have a  
11:51 17 breadcrumb that does not have the drop-down, right?

11:51 18 A. That's right.

11:51 19 Q. Okay. Were you here during the openings?

11:51 20 A. Yes.

11:51 21 Q. Opening statements?

11:51 22 A. I think so.

11:51 23 Q. And I said there were some pages that hadn't  
11:51 24 quite been redesigned in that way.

11:51 25 Do you remember that?

11:51 1 A. I remember you saying that. I don't remember  
11:51 2 what pages you were referring to.

11:51 3 Q. Okay.

11:51 4 MR. DEVLIN: Mr. Gooden, are we able to  
11:51 5 go to this exact page here?

11:51 6 BY MR. DEVLIN:

11:51 7 Q. Let me ask you: So here we are on the -- do  
11:52 8 you recognize this as the same page we were just at?

11:52 9 A. Yes.

11:52 10 Q. Okay. And the breadcrumb would exist below  
11:52 11 that sort of image and above where it says "MCU/MPU  
11:52 12 Development Tools," right?

11:52 13 A. Yes.

11:52 14 Q. And it's not there?

11:52 15 A. Yes. But as I look at this URL, it's not  
11:52 16 formed correctly. It doesn't have en-us. This must be  
11:52 17 a page that we did in the interim that is still on the  
11:52 18 site, but it doesn't -- it's not the final version.

11:52 19 Q. That's exactly my point. So this is not  
11:52 20 redesigned in the same way that many, many of the other  
11:52 21 pages have been redesigned, as we've been talking about  
11:52 22 during this case, right?

11:52 23 A. Well, it's not exactly true. With the  
11:52 24 development tools pages in that section, we actually  
11:52 25 changed the URL layout. And they were -- they started

11:52 1 out pretty early on, and we didn't have the en-us in  
11:53 2 it.

11:53 3 And so when we went that route, when we  
11:53 4 decided, okay, we're going to do international sites,  
11:53 5 so we need to prepare ahead of time and put en-us in  
11:53 6 it, so this one would have been kind of a precursor to  
11:53 7 what we ended up with.

11:53 8 Q. So your thought is that this document --

11:53 9 A. Uh-huh.

11:53 10 Q. -- was converted earlier -- very early in the  
11:53 11 redesign stage?

11:53 12 A. Yes.

11:53 13 Q. Okay. Rather than it being available in  
11:53 14 November or December of this year?

11:53 15 A. Well, I don't know if it's still available or  
11:53 16 not. It was just designed earlier.

11:53 17 Q. Okay. I see. But what we're seeing, though,  
11:53 18 is that this has no breadcrumb at all. That's been  
11:53 19 either stripped out or commented out, right?

11:53 20 A. Or it never was put in.

11:53 21 Q. Well, we just saw the same page where it was  
11:53 22 in there.

11:53 23 A. Oh, yes. You're right. Well, that was the  
11:53 24 old site, and this is the new site.

11:53 25 Q. That's what I mean. So in the new site what's

11:53 1 happened is, page looks the same --

11:53 2 A. Uh-huh.

11:53 3 Q. -- but the entire breadcrumb, active or not,  
11:53 4 has been either stripped out or commented out, right?

11:54 5 A. It's not displaying on the page. Yes.

11:54 6 Q. Okay. And the reason it's not displaying is  
11:54 7 because the software code is not executing to display  
11:54 8 it, right?

11:54 9 A. Yes.

11:54 10 Q. And the reason that's happening or not  
11:54 11 happening is because that code that would display it  
11:54 12 has either been deleted or commented out?

11:54 13 A. Well, that would be a question for a software  
11:54 14 developer.

11:54 15 Q. One or the other, right?

11:54 16 A. It would be a question for a software  
11:54 17 developer.

11:54 18 Q. There's no code executing to put the active --

11:54 19 A. I don't know --

11:54 20 MR. JENSEN: Objection. Asked and  
11:54 21 answered.

11:54 22 THE COURT: Yeah.

11:54 23 Ladies and gentlemen, we're going to take  
11:54 24 our lunch break.

11:54 25 MR. DEVLIN: Thank you.

11:54 1 THE COURT: If you all would remember my  
11:54 2 instructions not to discuss the case amongst  
11:54 3 yourselves. We'll try to start at, as best we can, by  
11:54 4 1:15 or so. Thank you.

11:54 5 THE BAILIFF: All rise.

11:54 6 (Jury exited the courtroom.)

11:54 7 THE COURT: Thank you. You may be  
11:55 8 seated.

11:55 9 Mr. Devlin, is there anything we need to  
11:55 10 take up?

11:55 11 MR. DEVLIN: I think we wanted to  
11:55 12 organize our exhibits to correct the errors that we had  
11:55 13 made yesterday. And we also have the exhibit list that  
11:55 14 was used this morning with Mr. Blok.

11:55 15 THE COURT: Okay.

11:55 16 MR. DEVLIN: And as I understand it, we  
11:55 17 used both of these -- all of these exhibits now have  
11:55 18 been agreed upon by both sides. And we got our ducks  
11:55 19 in a row.

11:55 20 So on the first issue, yesterday we  
11:55 21 offered Plaintiffs' 13 and Plaintiffs' 478. And those  
11:55 22 are being withdrawn. Plaintiffs' 13 and Plaintiffs'  
11:55 23 478.

11:55 24 And then what I should have said  
11:56 25 yesterday for those was Defendant's 189 and Defendant's

11:56 1 478.

11:56 2 MR. JENSEN: And, Your Honor, we object  
11:56 3 to Defendant's Exhibit 478.

11:56 4 MR. DEVLIN: Your Honor, Defendant's  
11:56 5 478 -- thank you for that. My apologies.

11:56 6 Defendant's 478 is the one where -- it's  
11:56 7 the -- it's the live website. And so the parties are  
11:56 8 going to talk about that and try to propose something  
11:56 9 jointly to the Court about how to deal with that.

11:56 10 THE COURT: Okay.

11:56 11 MR. DEVLIN: And then today with Mr. Blok  
11:56 12 we have Joint 15, Joint 16, Joint 17, Joint 18, Joint  
11:56 13 19, Joint 21, Joint 104, Defendant's 467, and  
11:56 14 Plaintiffs' 96.

11:56 15 And I'm going to apologize now. I'm not  
11:56 16 sure if that has been deduped with what had already  
11:56 17 been admitted previously. But that was what was used  
11:57 18 with Mr. Blok.

11:57 19 THE COURT: Any objections?

11:57 20 MR. JENSEN: I'd like to double-check on  
11:57 21 some of those. But we can talk about that. I'm not  
11:57 22 aware at this moment. I've just got that list right  
11:57 23 now. So...

11:57 24 MR. DEVLIN: Well, that's fine. That's  
11:57 25 not quite right. They've had the list, and my



11:57 1 understanding is they're okay with it. But we'll deal  
11:57 2 with it, Your Honor.

11:57 3 THE COURT: Just let us know. Okay.

11:57 4 Anything else?

11:57 5 MR. DEVLIN: Nothing from the plaintiff,  
11:57 6 Your Honor. Thank you.

11:57 7 THE COURT: Okay.

11:57 8 THE BAILIFF: All rise.

11:57 9 (Recess taken.)

01:25 10 THE BAILIFF: All rise.

01:25 11 THE COURT: Please remain standing for  
01:25 12 the jury.

01:25 13 (Jury entered the courtroom.)

01:25 14 THE COURT: Thank you. You may be  
01:25 15 seated.

01:25 16 Mr. Devlin?

01:26 17 MR. DEVLIN: Thank you, Your Honor. May  
01:26 18 it please the Court.

01:26 19 BY MR. DEVLIN:

01:26 20 Q. You all set, Ms. Mahar?

01:26 21 A. I think it's good. Can you hear me?

01:26 22 Q. Yeah. Thank you.

01:26 23 A. Great.

01:26 24 Q. Let's just finish off where we -- or finish up  
01:26 25 where we left off, just to clear that up. So we had --

01:26 1 MR. DEVLIN: I don't know if you can pull  
01:26 2 that screen up again, Mr. Gooden.

01:26 3 BY MR. DEVLIN:

01:26 4 Q. We're not going to delve into the details, but  
01:26 5 I just want to center our minds on what we were looking  
01:26 6 at.

01:26 7 So as I understood it, we agree that there's  
01:26 8 no breadcrumb at all on this particular page which is  
01:26 9 current. It's what we're looking at live; is that  
01:26 10 right?

01:26 11 A. So I don't see it on the page. But it doesn't  
01:26 12 mean it wasn't in the code.

01:26 13 Q. Right. If it's in the code, you can comment  
01:26 14 it out?

01:26 15 A. That would be a question for a software  
01:27 16 developer.

01:27 17 Q. Right. I'm just saying you know what  
01:27 18 commenting out is. I'm not -- I know you can't confirm  
01:27 19 what happened with this page. But I just want to talk  
01:27 20 about what that is. Let me just try it and you see if  
01:27 21 you agree.

01:27 22 Commenting out is when you convert something  
01:27 23 that can be executed or interpreted in code. And  
01:27 24 instead you put a little syntax in front of it, and  
01:27 25 then it looks to the computer like a comment that it's

01:27 1 not going to execute; is that right?

01:27 2 A. That would be a question for the software  
01:27 3 developer.

01:27 4 Q. Okay. You've used that term, "commented out,"  
01:27 5 right?

01:27 6 A. Yes.

01:27 7 Q. So that's what I'm saying. I'm just  
01:27 8 confirming that's one way that one can do something  
01:27 9 with code so that it doesn't execute. You can comment  
01:27 10 it out, right?

01:27 11 A. Yes. But I don't know if that's what happened  
01:27 12 here.

01:27 13 Q. I understand that.

01:27 14 A. Okay.

01:27 15 Q. I'm just trying to confirm that we all know  
01:27 16 what commented out means --

01:27 17 A. Okay.

01:27 18 Q. -- and what that says. Okay. Awesome.  
01:27 19 Great.

01:27 20 So the breadcrumb code might be in there  
01:27 21 somewhere but commented out or it might be gone. You  
01:27 22 don't know?

01:27 23 A. I don't know.

01:27 24 Q. Great. But we can agree it's not executing.  
01:27 25 There's no breadcrumb on the page that we see, right?

01:27 1 MR. JENSEN: Objection, asked and  
01:28 2 answered. Calls for speculation.

01:28 3 THE COURT: Sustained.

01:28 4 MR. DEVLIN: Thank you.

01:28 5 BY MR. DEVLIN:

01:28 6 Q. So, if I heard you right before, the -- what  
01:28 7 your thought was, was that this would have been a page  
01:28 8 that had been redesigned early on before you made some  
01:28 9 decisions about putting in that en.us (sic) snippet?

01:28 10 A. Yes. That's right.

01:28 11 Q. Okay. Thank you.

01:28 12 MR. DEVLIN: We can take that down.

01:28 13 BY MR. DEVLIN:

01:28 14 Q. I want to circle back and just get another  
01:28 15 little bit of information about something we talked  
01:28 16 about before, which was the sales that are driven by  
01:28 17 microchip.com to microchipdirect.com.

01:28 18 Are you with me?

01:28 19 A. Sure.

01:28 20 Q. Okay. And the relationship between that and  
01:28 21 the different versions of the website over the years.  
01:28 22 Remember that?

01:28 23 A. Okay.

01:28 24 Q. Okay. Great.

01:28 25 And so I think you said that when the new

01:28 1 version of the website came online, that the sales went  
01:29 2 up a lot?

01:29 3 A. No. What I said was that the sales went up a  
01:29 4 lot from 2014 to 2020 and even today over time.

01:29 5 Q. Okay. Thank you.

01:29 6 And I'm glad we cleared that up because  
01:29 7 there's -- that's a separate issue in my mind, I think.  
01:29 8 So let me know. I thought you had said something like  
01:29 9 when the conversion was made to the redesigned website,  
01:29 10 that that also caused the sales to go up.

01:29 11 But did I misunderstand that? Maybe I made it  
01:29 12 up.

01:29 13 A. I don't recall saying that.

01:29 14 Q. Okay. Thank you.

01:29 15 You mentioned that, to your knowledge,  
01:29 16 Microchip would never willfully infringe anyone's  
01:29 17 patents.

01:29 18 Did I get that right?

01:29 19 A. Yes.

01:29 20 Q. Okay. Now, I know Microchip hired litigation  
01:29 21 counsel, obviously.

01:29 22 Are you aware of whether Microchip ever hired  
01:30 23 something called "opinion counsel" to provide an  
01:30 24 independent legal opinion about infringement?

01:30 25 Are you aware of anything like that?

01:30 1 A. That would be a question for the attorneys.

01:30 2 Q. Okay. So you're not aware of it, is what I'm  
01:30 3 saying?

01:30 4 A. No.

01:30 5 Q. Okay. Thank you.

01:30 6 How's the reception been in the community, the  
01:30 7 user community, to the redesigned website?

01:30 8 A. So we don't hear compliments a lot. We hear  
01:30 9 complaints. But this time we heard some compliments.  
01:30 10 Hey, that site loads fast. Thank you so much. And I  
01:30 11 can find what I need to find. Thank you so much. The  
01:30 12 search is working great, so much improved. Things like  
01:30 13 that.

01:30 14 MR. DEVLIN: Let's go onto the Forum  
01:31 15 website now.

01:31 16 BY MR. DEVLIN:

01:31 17 Q. And we can see -- so this is live on the  
01:31 18 Forums website.

01:31 19 And do you see this is -- this is how the  
01:31 20 Forum works. There's posts. Someone can make a post,  
01:31 21 right?

01:31 22 A. Correct.

01:31 23 Q. And then others --

01:31 24 MR. DEVLIN: If you just scroll,  
01:31 25 Mr. Gooden.

01:31 1 BY MR. DEVLIN:

01:31 2 Q. Others can respond to that post and, you know,  
01:31 3 comment back or ask questions or whatever. That's how  
01:31 4 Forum looks, right?

01:31 5 A. Correct.

01:31 6 Q. This is a typical page from the Forum website?

01:31 7 A. Correct.

01:31 8 Q. Great. Okay.

01:31 9 And this one is a page where someone was  
01:31 10 making this first comment on November 16th, 2020.

01:31 11 Do you see that?

01:31 12 A. Yeah.

01:31 13 Q. Okay. And it looks like they're -- in this  
01:31 14 first post, they've got some thoughts here. And then  
01:31 15 about eight lines down there's a word that says  
01:31 16 "recently," right near the bottom of that post.

01:31 17 MR. DEVLIN: Hold that, Mr. Gooden.

01:31 18 BY MR. DEVLIN:

01:31 19 Q. Now, I think you said that the start of the  
01:31 20 implementation of the redesign was in June 2020; is  
01:31 21 that right?

01:31 22 A. That's right.

01:31 23 Q. Okay. So here we're in November 2020, but it  
01:32 24 was gradual. Is that what you said, over time?

01:32 25 A. Yeah.

01:32 1 Q. Okay. And so this poster is saying:  
01:32 2 Recently, I tend to have the impression that it has  
01:32 3 become more difficult to find information on the  
01:32 4 Microchip website.

01:32 5 You see that?

01:32 6 A. Yes.

01:32 7 Q. Okay. Let's go to another one.

01:32 8 MR. JENSEN: Objection, Your Honor. This  
01:32 9 is hearsay. He's just reading third-party comments off  
01:32 10 the Internet.

01:32 11 MR. DEVLIN: Well, they've made an issue  
01:32 12 of the reaction, and we're not here for matters  
01:32 13 asserted. This is people's reactions.

01:32 14 THE COURT: Sustained.

01:32 15 MR. DEVLIN: Thank you.

01:32 16 BY MR. DEVLIN:

01:32 17 Q. Have you seen any other negative comments?

01:32 18 A. Oh, I'm sure there have been some that have  
01:32 19 come in.

01:32 20 Q. Okay.

01:32 21 A. You know.

01:32 22 Q. That's it? Some that have come in?

01:32 23 A. Yeah.

01:32 24 Q. All right. You've seen that happen?

01:32 25 A. Uh-huh.



01:32 1 Q. All right. Thank you so much.

01:32 2 MR. DEVLIN: Nothing further.

01:32 3 REDIRECT EXAMINATION

01:32 4 BY MR. JENSEN:

01:33 5 Q. I have just a couple of follow-up questions  
01:33 6 for you, Ms. Mahar.

01:33 7 You were asked some questions about the Forum  
01:33 8 website at the beginning of Mr. Devlin's questioning,  
01:33 9 where he pulled up the site on the screen.

01:33 10 Do you recall that?

01:33 11 A. Yes.

01:33 12 Q. And he kind of navigated some links?

01:33 13 A. Yes.

01:33 14 Q. And the software for the Forum website is  
01:33 15 provided by a third party, correct?

01:33 16 A. Yes.

01:33 17 Q. And that's ASP Playground?

01:33 18 A. Yes.

01:33 19 Q. And that's not Microchip software?

01:33 20 A. No.

01:33 21 Q. Okay. And your primary responsibility at  
01:33 22 Microchip is not for the Forum website, is it?

01:33 23 A. That's correct.

01:33 24 Q. And you don't regularly use the Forum website  
01:33 25 as part of your job?

01:33 1 A. No. I don't.

01:33 2 Q. And you're not here to testify today about the  
01:33 3 issue of infringement in this case, are you?

01:33 4 A. No. I'm not.

01:33 5 Q. And we haven't heard yet from Mr. Tittel,  
01:33 6 Microchip's technical expert, have we?

01:33 7 A. No. We haven't.

01:34 8 Q. And Mr. Devlin didn't walk through with you  
01:34 9 the claim elements like he did with Mr. Sherwood over  
01:34 10 an extended period of time?

01:34 11 A. No.

01:34 12 Q. And you haven't performed any analysis or  
01:34 13 prepared any opinions on the patents in this case, have  
01:34 14 you?

01:34 15 A. No.

01:34 16 Q. And you're not a patent expert?

01:34 17 A. No.

01:34 18 Q. All right.

01:34 19 A. No.

01:34 20 MR. JENSEN: Mr. Thompson, could we pull  
01:34 21 up Defendant's Exhibit -- I believe it's 463, the  
01:34 22 video?

01:34 23 BY MR. JENSEN:

01:34 24 Q. And Mr. Devlin asked you, I think, some  
01:34 25 questions, Ms. Mahar, about what he called "labels."

01:34 1 A. Yes.

01:34 2 Q. Okay. I'd like to ask just one or two  
01:34 3 follow-up questions on that topic once we get the  
01:34 4 video.

01:35 5 MR. JENSEN: Okay. There we go. Thank  
01:35 6 you.

01:35 7 And could you just play the video one  
01:35 8 time through, Mr. Thompson?

01:35 9 (Video played.)

01:35 10 BY MR. JENSEN:

01:35 11 Q. And while this is playing, please just watch  
01:35 12 the path that is selected, Tools and Software, Embedded  
01:35 13 Software Center, MPLAB® Connect Configurator.

01:35 14 MR. JENSEN: Okay. And you can just  
01:35 15 pause it there.

01:35 16 BY MR. JENSEN:

01:35 17 Q. And the resulting menu path includes links for  
01:35 18 Home, Interface and Connectivity, USB, and then MPLAB®  
01:35 19 Connect Configurator.

01:35 20 Do you see that?

01:35 21 A. Yes.

01:35 22 Q. If you were to click on, for example, the USB  
01:35 23 link, would that load any of the pages that were  
01:35 24 previously navigated?

01:35 25 THE COURT: Counsel --

01:35 1 MR. DEVLIN: Objection. Calls for  
01:35 2 speculation. She said she doesn't know.

01:35 3 THE COURT: Why don't you ask her if she  
01:35 4 knows, and then that'll take care of at least the  
01:36 5 objection, and we'll go from there.

01:36 6 BY MR. JENSEN:

01:36 7 Q. Ms. Mahar, do you know what page would load  
01:36 8 if -- strike that. Let me ask the question this way.

01:36 9 Would a USB page load if someone were to click  
01:36 10 on the USB link?

01:36 11 A. Yes.

01:36 12 Q. Okay. And a USB page was not one of the links  
01:36 13 that was navigated by the user?

01:36 14 A. That's right.

01:36 15 Q. Okay.

01:36 16 MR. JENSEN: No further questions.

01:36 17 THE COURT: Mr. Devlin?

01:36 18 RECROSS-EXAMINATION

01:36 19 BY MR. DEVLIN:

01:36 20 Q. You don't know who made that video, do you?

01:36 21 A. No.

01:36 22 Q. Okay. There are many, many, many, many  
01:36 23 hundreds of such progressions one can make through the  
01:36 24 main website through the different options in the  
01:36 25 various levels of the hierarchical menu structure,

01:36 1 right?

01:36 2 A. Like any website, there's lots of ways to get  
01:36 3 to different pages, yes.

01:36 4 Q. Right. What I mean is there's lots and lots  
01:37 5 of pages, is what I'm saying.

01:37 6 A. Yeah. Our website's -- is huge.

01:37 7 Q. Okay. Got it.

01:37 8 And the point, I guess, here is for this  
01:37 9 particular website, it doesn't look like these things  
01:37 10 line up.

01:37 11 Did I get that right?

01:37 12 A. Yes.

01:37 13 Q. Okay. Now, for some of them, they would line  
01:37 14 up?

01:37 15 A. If we made them that way.

01:37 16 Q. All right. And you did make them that way for  
01:37 17 some of them?

01:37 18 A. Yes.

01:37 19 Q. All right. Thank you.

01:37 20 MR. DEVLIN: Nothing further.

01:37 21 MR. JENSEN: No further questions.

01:37 22 THE COURT: You may step down, ma'am.  
01:37 23 Who's your next witness?

01:37 24 MR. JENSEN: Microchip calls Mr. Ed  
01:37 25 Tittel.

01:37 1 Before Mr. Tittel takes the stand, could  
01:37 2 we confirm with the plaintiff that their case-in-chief  
01:37 3 is now closed?

01:37 4 MR. DEVLIN: Subject to the issues we  
01:37 5 raised before, Your Honor, yes. Our direct case is  
01:38 6 closed.

01:38 7 Thank you.

01:38 8 (The witness was sworn.)

01:38 9 DIRECT EXAMINATION

01:38 10 BY MR. JENSEN:

01:38 11 Q. We're getting you a binder, Mr. Tittel.  
01:38 12 Please bear with us just one moment.

01:38 13 Good afternoon, Mr. Tittel.

01:39 14 A. Good afternoon.

01:39 15 Q. Could you please state and spell your name for  
01:39 16 the record?

01:39 17 A. Sure. My name is Edward Tittel. E-d-w-a-r-d  
01:39 18 T-i-t-t-e-l.

01:39 19 Q. Where do you reside?

01:39 20 A. I reside in Round Rock, Texas.

01:39 21 Q. And what do you do for a living?

01:39 22 A. I'm a writer, consultant, and a part-time  
01:40 23 expert witness.

01:40 24 Q. Do you work for a company?

01:40 25 A. No, sir.

01:40 1 Q. Are you on your own, so to speak?

01:40 2 A. I'm pretty much self-employed. That's right.

01:40 3 Q. Mr. Tittel, do you have a resume?

01:40 4 A. I do.

01:40 5 Q. Okay.

01:40 6 MR. JENSEN: Mr. Thompson, could you pull  
01:40 7 up Mr. Tittel's resume, please?

01:40 8 BY MR. JENSEN:

01:40 9 Q. And while that's coming up, let me just ask  
01:40 10 you. What -- well, how long have you been kind of  
01:40 11 self-employed, as you put it?

01:40 12 A. With a couple of small gaps, since 1994.

01:40 13 Q. And without going too far back into ancient  
01:40 14 history, at a very high level, what were you doing kind  
01:40 15 of prior to that time?

01:40 16 A. You mean prior to 1994?

01:40 17 Q. Yeah.

01:40 18 A. I was working as a software developer and as a  
01:40 19 training developer and a slide jockey for a variety of  
01:40 20 different companies.

01:41 21 Q. Let me kind of ask -- well, first off, is this  
01:41 22 a copy of your resume that we see on the screen?

01:41 23 A. Yes. It is.

01:41 24 Q. And I'm not going to walk through all of the  
01:41 25 kind of prior work experience, et cetera, that you

01:41 1 have. But I did want to ask kind of, you know, what  
01:41 2 were you doing in the, let's say, early 2002 time frame  
01:41 3 when the patent application in this case was filed?

01:41 4 A. In the period from the late '90s through 2002,  
01:41 5 I was involved in writing books and in developing  
01:41 6 courses. I was also an adjunct member of the faculty  
01:41 7 at Austin Community College for whom I developed a  
01:41 8 four-course sequence for a webmaster certification.

01:41 9 Q. And your mention of the community college  
01:41 10 reminded me, I did want to ask a little bit about your  
01:41 11 kind of academic background.

01:41 12 Do you have some academic credentials that are  
01:42 13 listed in your resume?

01:42 14 A. I do.

01:42 15 Q. Okay.

01:42 16 MR. JENSEN: Could we jump, I think, to  
01:42 17 the --

01:42 18 A. The bottom of Page 2.

01:42 19 BY MR. JENSEN:

01:42 20 Q. Okay.

01:42 21 A. There we go.

01:42 22 Q. And as it relates to this case, what sort of  
01:42 23 degrees or diplomas have you obtained?

01:42 24 A. I have a bachelor's equivalency in computer  
01:42 25 science from the University of Texas at Austin. And



01:42 1 about 18 additional graduate hours of credit from their  
01:42 2 graduate school.

01:42 3 Q. Do you hold any other degrees?

01:42 4 A. Yes. I hold two other degrees.

01:42 5 Q. What are those?

01:42 6 A. I have a bachelor's from Princeton that I got  
01:42 7 in 1973 and a master's from the University of Texas in  
01:42 8 1979, both of which are in anthropology.

01:42 9 Q. Mr. Tittel, do you have any publications that  
01:42 10 relate to the subject matter of this case?

01:42 11 A. Yes. I do.

01:42 12 Q. Can you give me an example of one of those?

01:42 13 A. Well, it just so happens that I brought some  
01:42 14 with me.

01:42 15 (Laughter.)

01:42 16 BY MR. JENSEN:

01:42 17 Q. All right.

01:42 18 A. Let's see. Where did I put them?

01:43 19 What really got me started on working on the  
01:43 20 web was writing the first edition of "HTML For Dummies"  
01:43 21 in 1995. Unfortunately, I couldn't find it anymore, so  
01:43 22 I brought the 14th edition of that book which came out  
01:43 23 in 2013.

01:43 24 And --

01:43 25 Q. Let me just pause you there and ask: Is

01:43 1 that -- so the "HTML For Dummies." What is HTML?

01:43 2 A. HTML is the HyperText Markup Language. It's  
01:43 3 sort of the basic way of defining what shows up on a  
01:43 4 web page in a browser.

01:43 5 Q. And were you the -- I want to make sure I  
01:43 6 caught this. Were you the co-author or principal  
01:43 7 author on that book? What was your role in the "HTML  
01:43 8 For Dummies" series?

01:43 9 A. I was approached by my agent and asked to  
01:43 10 write the book. And I recruited another friend of mine  
01:43 11 to help me. And I wrote the outline and a little bit  
01:43 12 more than half the book. And I've been working on it  
01:43 13 ever since.

01:43 14 Q. And you said it's in the 14th edition now?

01:43 15 A. Yes. That's correct.

01:44 16 Q. Mr. Tittel, do you have a CV?

01:44 17 A. I do.

01:44 18 Q. And what is a CV?

01:44 19 A. A CV is a Latin phrase. It stands for  
01:44 20 curriculum vitae, which means a listing of things from  
01:44 21 one's life. But in this case it's just a list of  
01:44 22 publications.

01:44 23 Q. All right.

01:44 24 MR. JENSEN: Mr. Thompson, could you  
01:44 25 please pull up Mr. Tittel's CV?

01:44 1 BY MR. JENSEN:

01:44 2 Q. And while that's coming up -- all right.

01:44 3 Looks like we've got it up here right now. Okay.

01:44 4 And how long is this CV? I can't tell by  
01:44 5 looking at the front page.

01:44 6 A. It's 86 pages long.

01:44 7 Q. 86 pages. And at a high -- we're not going to  
01:44 8 go through 86 pages of material in your CV, believe me.  
01:44 9 But can you just give me a sense, kind of a summary  
01:44 10 level, what sort of materials are listed in your CV?

01:44 11 A. You bet. If you take a look at the top of the  
01:44 12 page there, it has a list of different topics. There's  
01:44 13 books and custom books, and then books either I edited  
01:44 14 or just contributed pieces to. There's white papers  
01:45 15 and tech briefs, webinars, blogs, certification  
01:45 16 articles, magazines articles, other writing, and  
01:45 17 projects in progress.

01:45 18 (Clarification by the reporter.)

01:45 19 BY MR. JENSEN:

01:45 20 Q. Approximately how many or what percentage of  
01:45 21 your writings and publications relate to website design  
01:46 22 and development?

01:46 23 A. About 40 percent.

01:46 24 Q. And how long have you been publishing in this  
01:46 25 area?

01:46 1 A. Well, the first thing that I published on this  
01:46 2 subject matter was the first edition of "HTML For  
01:46 3 Dummies," and that came out in 1995. So that was,  
01:46 4 what? 37 years ago. Yeah. I think so.

01:46 5 Q. All right. And what sorts of web-related  
01:46 6 topics have you published on?

01:46 7 A. I've written about HTML. I've written about  
01:46 8 XML. I've written about XHTML. I've written about  
01:46 9 Cascading Style Sheets. I've written about web design.  
01:46 10 I've written about a variety of programming languages  
01:46 11 that run in the web environment, including Java and  
01:46 12 JavaScript.

01:46 13 And also I have written a book on e-commerce,  
01:46 14 building -- web e-commerce sites came out, I believe,  
01:46 15 in 1997. And as far as I can tell, it was one of the  
01:46 16 first ever books to come out on that subject matter.

01:47 17 And a year before that -- this is actually the  
01:47 18 second edition of a book, but the first title was so  
01:47 19 long I think the publisher decided they needed  
01:47 20 something shorter, so they called it the CGI Bible.

01:47 21 Q. And what is CGI? I've heard of that in the  
01:47 22 context of, like, special effects for movies.

01:47 23 What is a CGI in the context of websites?

01:47 24 A. It stands for the common gateway interface,  
01:47 25 and it was defined at NCSA by Rob McCool in the 1993

01:47 1 time frame as the first way to hook other programs up  
01:47 2 to a web server so that you could have a web server  
01:47 3 call on a database or interact with another program and  
01:47 4 essentially get the web pages to do more than HTML can  
01:47 5 do by itself.

01:47 6 Q. Do you cover the topics of web navigation in  
01:47 7 any of your books?

01:47 8 A. Yes. I do.

01:47 9 Q. And you mentioned the "For Dummies" book, I  
01:48 10 think, was first published in 1995; is that correct?

01:48 11 A. Correct.

01:48 12 Q. Is that before or after the Google website had  
01:48 13 launched?

01:48 14 A. Well, Google started in 1998, so I guess it  
01:48 15 was before.

01:48 16 Q. So you were publishing in the area of website  
01:48 17 design and development before the advent of Google?

01:48 18 A. Yes, sir.

01:48 19 Q. And sounds like some of your books go back,  
01:48 20 you know, quite a ways, some decades.

01:48 21 Are you still actively publishing in these  
01:48 22 areas today?

01:48 23 A. We're actually in the process of negotiating  
01:48 24 the 15th edition of "HTML for Dummies" right now. And  
01:48 25 I still write publications for a couple of different

01:48 1 publishers, including Wiley, who now owns the Dummies  
01:48 2 brand, and also an outfit called ActualTech Media that  
01:48 3 publishes for a variety of different industries.

01:48 4 Q. Have you ever previously testified in court as  
01:48 5 a witness?

01:48 6 A. Yes. I have testified at three previous  
01:49 7 trials.

01:49 8 Q. And were those trials in patent cases?

01:49 9 A. Yes. They were.

01:49 10 Q. Did they relate to website design?

01:49 11 A. By and large, yes.

01:49 12 Q. Approximately how much of your time do you  
01:49 13 devote to this type of expert witness work as opposed  
01:49 14 to your, you know, writing and other endeavors?

01:49 15 A. That's about 25 or 20 percent, and the reason  
01:49 16 why I don't do more is because I like to keep my other  
01:49 17 writing engagements up and running, and I don't want to  
01:49 18 get too overwhelmed with legal work.

01:49 19 Q. You showed -- kind of did a little  
01:49 20 show-and-tell with a few books there.

01:49 21 What was your best selling book?

01:49 22 A. Well, that would be "HTML For Dummies" by  
01:49 23 virtue of having gone through so many editions. It  
01:49 24 sold a total of over two million copies across all  
01:49 25 editions.

01:49 1 Q. I hope you get royalties for that.

01:49 2 A. Amen.

01:49 3 Q. Mr. Tittel, have you ever created a website?

01:50 4 A. Yes. I have.

01:50 5 Q. Okay.

01:50 6 MR. JENSEN: At this time, Your Honor,  
01:50 7 I'd like to offer Mr. Tittel as an expert in website  
01:50 8 design, development, and implementation.

01:50 9 MR. DEVLIN: No objection.

01:50 10 THE COURT: He'll be admitted.

01:50 11 BY MR. JENSEN:

01:50 12 Q. Mr. Tittel, did you prepare some demonstrative  
01:50 13 slides to assist with the presentation of your  
01:50 14 testimony today?

01:50 15 A. Yes, sir. I did.

01:50 16 MR. JENSEN: Mr. Thompson, why don't we  
01:50 17 go ahead and pull those slides up?

01:50 18 BY MR. JENSEN:

01:50 19 Q. And let me just ask another question here.  
01:50 20 You've been with us throughout the trial the entire  
01:50 21 time in the galley in the back; is that right?

01:50 22 A. Yes, sir.

01:50 23 Q. Okay. And you were here when Mr. Sherwood  
01:50 24 testified as well?

01:50 25 A. I was.

01:50 1 Q. Okay. Before we kind of dig in and get into  
01:50 2 the meat of your testimony, I wanted to ask you if you  
01:50 3 could provide just a high-level summary of what it was  
01:50 4 that you undertook to do, what were you asked to  
01:51 5 evaluate, and what conclusions and opinions did you  
01:51 6 reach?

01:51 7 A. I was asked to provide a noninfringement  
01:51 8 summary of the various Microchip websites that were the  
01:51 9 subject of this process we're involved in, and that  
01:51 10 included the old website, the redesigned website, and  
01:51 11 the Forum website.

01:51 12 And as far as the old website goes, as I will  
01:51 13 be explaining, I concluded that Microchip did not  
01:51 14 infringe.

01:51 15 The redesigned website is not accused. So it  
01:51 16 does not infringe either.

01:51 17 And as I examined the Forum section and looked  
01:51 18 at the behavior of that website, I concluded that it  
01:51 19 also does not infringe.

01:52 20 Q. Okay. And then I wanted to ask you to maybe  
01:52 21 go one step further for each of these websites and just  
01:52 22 provide -- maybe I could call it -- the top-line reason  
01:52 23 as to why you concluded each one did not infringe.

01:52 24 And I understand you may have additional  
01:52 25 reasons, and we may explore some of those in further



01:52 1 detail, but I wanted to focus just at the outset on  
01:52 2 what is the -- or maybe you'd call it the primary  
01:52 3 reason that the original website did not infringe?

01:52 4 A. Sure. Essentially, after examining the  
01:52 5 behavior of the website and its use of breadcrumbs, I  
01:52 6 came to the conclusion that there is no Active Path as  
01:52 7 defined by the Court's construction and in the patents  
01:52 8 at issue.

01:52 9 Q. And I see you included a little figure here  
01:52 10 with the soccer ball and football.

01:53 11 What does that have reference to?

01:53 12 A. Well, that's a little bit of a reminder of  
01:53 13 some slides that the jury has seen before that  
01:53 14 basically talks about the way you decide if a claim is  
01:53 15 infringed or not.

01:53 16 And the requirement is that all elements in a  
01:53 17 claim must be infringed in order for infringement to  
01:53 18 occur. And the notion of all elements not met means  
01:53 19 that one or more of the claims -- of the claim elements  
01:53 20 is not infringed and, therefore, the claim itself is  
01:53 21 not infringed.

01:53 22 Q. And what is the top-line reason, in your  
01:53 23 opinion, that the redesigned website does not infringe?

01:53 24 A. Well, the redesigned website no longer has a  
01:53 25 drop-down menu. So without the cascade for the

01:53 1 hierarchical menus, you can't have an Active Path and,  
01:54 2 therefore, the redesigned website does not infringe.

01:54 3 Q. And with respect to the Forum website, I see  
01:54 4 you've highlighted kind of two sections of the claim  
01:54 5 here.

01:54 6 Is that because there are two primary reasons?

01:54 7 A. Yes, sir. That's correct.

01:54 8 The preamble of the Forum website essentially  
01:54 9 says a method for navigating, and that means that an  
01:54 10 actor has to do something. And what I'm saying is that  
01:54 11 Microchip does not infringe because Microchip is not  
01:54 12 the actor that's doing the work with Forums.

01:54 13 The second reason on the slide is that there  
01:54 14 is not a one-to-one correspondence between the number  
01:54 15 of selections that the user makes when they're  
01:55 16 navigating the Forum website and the number of links  
01:55 17 that show up in the breadcrumb.

01:55 18 Q. And what claims did you analyze with respect  
01:55 19 to your noninfringement opinions?

01:55 20 A. I analyzed the claims shown here in this slide  
01:55 21 for the various patents at issue. The ones that are in  
01:55 22 bold are called independent claims, and the ones that  
01:55 23 are in regular text are dependent claims, which means  
01:55 24 they depend on one of the independent claims that is  
01:55 25 shown. And typically, it looks like, from looking at

01:55 1 the diagram now, they're all in the left-hand column  
01:55 2 there.

01:55 3 Q. And are these the same claims that  
01:55 4 Mr. Sherwood testified about?

01:56 5 A. Yes, sir. That's correct.

01:56 6 Q. It includes all the claims he analyzed and no  
01:56 7 additional ones?

01:56 8 A. Gosh, I hope not.

01:56 9 Q. It's a lot to keep track of. There's a lot of  
01:56 10 claims.

01:56 11 MR. JENSEN: Mr. Thompson, could we pull  
01:56 12 up Slide 2 from the slides that Mr. Sherwood presented?

01:56 13 BY MR. JENSEN:

01:56 14 Q. And, Mr. Tittel, while that's coming up, I  
01:56 15 want to ask you if you're familiar with the concept of  
01:56 16 what's referred to as a person of ordinary skill in the  
01:56 17 art?

01:56 18 A. Yes. I am. And that's usually pronounced as  
01:56 19 a "POSITA" or "POSITA," depending on how you like to  
01:56 20 speak out your acronyms.

01:56 21 It refers to a person who, at the time of the  
01:56 22 patent's filing, had what you might consider to be an  
01:56 23 ordinary understanding of the subject matter related to  
01:56 24 the patent.

01:56 25 They would have certain levels of education,

01:57 1 certain levels of experience, certain areas of  
01:57 2 knowledge and skill, and all those things taken  
01:57 3 together define a person of ordinary skill in the art.

01:57 4 Q. And did you form an opinion as to what the  
01:57 5 level of ordinary skill in the art would be, in this  
01:57 6 case, back in 2002 for, you know, kind of an ordinary  
01:57 7 software developer?

01:57 8 A. Well, I would say an ordinary web developer,  
01:57 9 but --

01:57 10 Q. Thank you.

01:57 11 A. -- yes. I did.

01:57 12 Q. Okay. And you see on the screen here, this is  
01:57 13 a slide from Mr. Sherwood's presentation that sets  
01:57 14 forth his -- I'll call it a definition of the level of  
01:57 15 skill in the art.

01:57 16 Did you have an opportunity to review this?

01:57 17 A. I did.

01:57 18 Q. Does it match identically with your definition  
01:57 19 of a person of ordinary skill in the art?

01:57 20 A. No. It does not.

01:57 21 Mine says two to three years of experience  
01:57 22 working in the field, whereas his says three to five  
01:57 23 years of working in the field. And there's a couple  
01:57 24 reasons for that.

01:57 25 One of them is that in 2002 the web hadn't

01:58 1 really been a big thing for all that long, so -- and it  
01:58 2 was getting to be a hot thing. So it would have been a  
01:58 3 little bit harder to find people with relatively more  
01:58 4 experience. But I don't disagree with Mr. Sherwood's  
01:58 5 characterization.

01:58 6 Q. Would it make a difference, one way or the  
01:58 7 other, to your opinions in this case whether you  
01:58 8 applied Mr. Sherwood's definition or your definition of  
01:58 9 a person of ordinary skill?

01:58 10 A. No. It would not.

01:58 11 Q. Okay. And in 2002, did you possess the  
01:58 12 qualifications of a person of ordinary skill in the  
01:58 13 art?

01:58 14 A. Yes. I think so.

01:58 15 Q. And it looked like maybe you possessed more  
01:58 16 than that?

01:58 17 A. I hope so.

01:58 18 Q. In forming your opinions in this case, did you  
01:58 19 form those opinions from the perspective of an ordinary  
01:58 20 person of skill in the art or of someone who had  
01:58 21 additional, you know, qualifications and credentials?

01:58 22 A. Well, the requirement for doing an  
01:59 23 infringement analysis is that you consider the POSITA  
01:59 24 as your point of reference. So I did it from the  
01:59 25 perspective of a person of ordinary skill in the art as

01:59 1 I was required to do.

01:59 2 MR. JENSEN: Mr. Thompson, you can take  
01:59 3 that down, and let's go back to the slide presentation.

01:59 4 Let's -- can we -- I think you need to  
01:59 5 activate the clicker here. Okay.

01:59 6 BY MR. JENSEN:

01:59 7 Q. In forming your opinions and conducting your  
01:59 8 analysis, Mr. Tittel, what materials did you consider  
01:59 9 or analyze?

01:59 10 A. Well, it's no accident that we see those  
01:59 11 materials on a table and covering most of that table  
01:59 12 up, because I actually had to review quite a lot of  
01:59 13 materials.

01:59 14 It started out with the patents-in-suit and  
01:59 15 their file history. And if you put them in a pile on  
01:59 16 top of each other, the file history would account for  
01:59 17 most of that stuff there. It also includes all kinds  
02:00 18 of legal filings, like the Judge's claim construction  
02:00 19 order in the case, and various kinds of interrogatories  
02:00 20 and responses, and various other kinds of pleadings and  
02:00 21 materials related to the case.

02:00 22 I looked at source code and manuals for the  
02:00 23 websites at issue and plenty of other websites besides,  
02:00 24 to try to get a sense of how the world worked and what  
02:00 25 was going on at the time.

02:00 1 I did read the third-party analysis materials  
02:00 2 from Dynamic Range Labs, the DRL that you see there on  
02:00 3 the slide.

02:00 4 I read the transcripts of witness testimony  
02:00 5 for witnesses that were taken on by the prosecution and  
02:00 6 also by the Microchip side.

02:00 7 And then I looked at a number of test cases  
02:00 8 and other kinds of materials related to the case.

02:00 9 Q. I wanted to ask just one follow-up question  
02:00 10 about this kind of mountain of materials here. You  
02:01 11 mentioned that you reviewed some source code in this  
02:01 12 case; is that correct?

02:01 13 A. It is.

02:01 14 Q. Did you personally review that source code?  
02:01 15 Or did you have somebody else do that work for you?

02:01 16 A. I reviewed it myself on the belief that my own  
02:01 17 impressions would be most useful in helping me to form  
02:01 18 my own opinions.

02:01 19 Q. Is that your normal practice?

02:01 20 A. It is.

02:01 21 Q. I understand, Mr. Tittel, that you've prepared  
02:01 22 a short technology tutorial for the jury; is that  
02:01 23 correct?

02:01 24 A. Yes. It is.

02:01 25 Q. Okay. I'd like to have you maybe present

02:01 1 that. Do you know how long that tutorial is?

02:01 2 A. It shouldn't run more than ten minutes.

02:01 3 Q. Okay.

02:01 4 A. I'm going to move the microphone a little bit.  
02:01 5 If it causes the court reporter any problems, I hope  
02:01 6 she'll let me know.

02:01 7 Basically what we're going to talk about is  
02:01 8 the two fundamental concepts that really guide and  
02:02 9 drive the Active Path that is the central concept to  
02:02 10 the '411 patent family at issue in this case.

02:02 11 We're going to talk about collapsing menus as  
02:02 12 you see on the left-hand side. And we're going to talk  
02:02 13 about breadcrumbs or the breadcrumb trail, as you can  
02:02 14 see from the little picture of Hansel and Gretel over  
02:02 15 there on the right-hand side.

02:02 16 Our first topic is a collapsing menu. And  
02:02 17 what I have taken is a snapshot of two of the figures  
02:02 18 that are used in the various patents, where Figure 1A  
02:02 19 shows a prior art, which means the preexisting, already  
02:02 20 understood idea of what a collapsing menu was at the  
02:02 21 time of the invention. And on the right-hand side we  
02:03 22 see the actual menu cascade as it's been opened up to  
02:03 23 three levels.

02:03 24 And what we see, looking back at Figure 1A to  
02:03 25 the left, is that we've hovered the mouse over the 1.4



02:03 1 item there. And what we see in the right-hand picture  
02:03 2 is having taken that same cascade out to three levels,  
02:03 3 so that we started by hovering over File to open up the  
02:03 4 first cascade. Then hovering over 1.2 to open up the  
02:03 5 second cascade. Hovering over 1.2.3 to open up the  
02:03 6 third cascade. And then hovering over 1.2.3.4.

02:03 7 THE WITNESS: Next slide, please.

02:03 8 A. Now, in the '301 patent we find a passage that  
02:04 9 says: By far the most popular menu navigation system  
02:04 10 is the so-called collapsing menu system which, for  
02:04 11 example, is used by many traditional personal computer  
02:04 12 applications.

02:04 13 If you use any of the Microsoft Office  
02:04 14 components, for example, those are the kinds of menus  
02:04 15 that they have too.

02:04 16 THE WITNESS: Next slide, please.

02:04 17 A. Now we're going to take a look at  
02:04 18 the breadcrumb trail. This is based, of course, on the  
02:04 19 famous fairytale of Hansel and Gretel that the Brothers  
02:04 20 Grimm first published in the early part of the 1800s.  
02:04 21 And, basically, the central idea of the story is that  
02:04 22 to find their way back from the forest, Hansel and  
02:04 23 Gretel sprinkled breadcrumbs so that they can follow  
02:04 24 their trail to get back home.

02:04 25 Now, of course, because the birds came and ate

02:04 1 the breadcrumbs, it didn't end well for Hansel and  
02:05 2 Gretel. But for us that trail of items that shows  
02:05 3 where we've been is what defines the notion of a  
02:05 4 breadcrumb trail.

02:05 5 And the kind of breadcrumb trail that we're  
02:05 6 most interested in for this case is the kind of  
02:05 7 breadcrumb trail that keeps track of where Hansel and  
02:05 8 Gretel are going as they take each step along the way.

02:05 9 So in this picture, we see a trail that goes  
02:05 10 from A to B to C to D. And that trail contains an  
02:05 11 entry for each of those things.

02:05 12 THE WITNESS: Next slide, please.

02:05 13 A. Of course, if you want to navigate around on a  
02:05 14 website, like, for example, Amazon, if you've got socks  
02:05 15 and a barbecue pit and some USB drives, you're going to  
02:05 16 have a few trails as you go around on the site. And so  
02:05 17 we see --

02:06 18 THE WITNESS: If Mr. Thompson will expand  
02:06 19 the various paths there for me.

02:06 20 A. We see a trail at the top that goes from A  
02:06 21 through E. We see, in the middle, a trail that goes  
02:06 22 from A through I, and then on the bottom we see a trail  
02:06 23 that goes from A through L.

02:06 24 And the thing to pay attention to about this  
02:06 25 is that as we jump back to A to start our next trail,

02:06 1 the old trail goes away and a new trail starts up.

02:06 2 THE WITNESS: Next slide, please.

02:06 3 A. Now, it's possible that you could find  
02:06 4 yourself in a situation where you might have more than  
02:06 5 one way to get from a starting point to a final  
02:06 6 destination. And what this figure shows, just as an  
02:06 7 example, is that there's three different ways to get  
02:06 8 from A to G.

02:06 9 There's the path that goes on top. There's  
02:07 10 the path that goes in the middle. And there's the path  
02:07 11 that goes on the bottom. And the thing is, as you  
02:07 12 would follow each one of these trails, the resulting  
02:07 13 breadcrumb would exactly reflect the path that you took  
02:07 14 from A to G.

02:07 15 So the breadcrumb for the first trail is on  
02:07 16 the top of the slide. The breadcrumb for the second  
02:07 17 trail is on the middle of the slide. And the  
02:07 18 breadcrumb for the third trail is on the bottom of the  
02:07 19 slide.

02:07 20 THE WITNESS: Next slide, please.

02:07 21 A. Now, typically we don't end up scattering  
02:07 22 breadcrumbs in the forest when we're navigating on the  
02:07 23 web. So I wanted to show you something that looked  
02:07 24 more familiar for those of you who've done any online  
02:07 25 shopping.

02:07 1 If we visit this sort of very generic mockup  
02:07 2 of a website and we click on Products, then we get a  
02:07 3 menu beneath Products that tells us what kinds of  
02:07 4 products we can buy.

02:07 5 And let's, for example, pick Home Decor. And  
02:08 6 then we get a list of different kinds of home decor  
02:08 7 that we could buy.

02:08 8 If we pick Bedding, then we get a list of  
02:08 9 various kinds of accessories that we could buy.

02:08 10 And if we click on Blankets, the cascading  
02:08 11 menus go away and we're left with that breadcrumb that  
02:08 12 you see on the right-hand side of the screen, which is  
02:08 13 Products, Home Decor, Bedding, and Blankets.

02:08 14 Notice that the things that we selected as we  
02:08 15 went down the cascade are exactly reproduced in the  
02:08 16 breadcrumb. And the number of things that we picked as  
02:08 17 we went through the cascade is also reflected in the  
02:08 18 breadcrumb.

02:08 19 THE WITNESS: Next slide, please.

02:08 20 BY MR. JENSEN:

02:08 21 Q. Thank you, Mr. Tittel. Let's turn next to the  
02:08 22 Caddo patents and apply the teachings that you just  
02:08 23 provided in the context of the patents asserted in this  
02:08 24 case.

02:09 25 First off, how many patents are we talking

02:09 1 about here?

02:09 2 A. We're talking a half dozen patents, or six, if  
02:09 3 you prefer numbers.

02:09 4 Q. And are those patents all part of the same  
02:09 5 patent family?

02:09 6 A. Yes. As you can see here on this slide, the  
02:09 7 '411 patent is the original, or parent, patent in this  
02:09 8 family. And if you look to the right, on top, outlined  
02:09 9 in blue, you'll see that the '517 patent is an  
02:09 10 out-and-out continuation of the '411 patent.

02:09 11 And what that means is that the specification,  
02:09 12 or the text in the front of the patent before the  
02:09 13 claims, is exactly the same between the '411 patent and  
02:09 14 the '517 patent.

02:09 15 And what you see down below in the patent and  
02:09 16 their numbers outlined in red is what's called a  
02:09 17 "continuation-in-part." And what that means is that  
02:09 18 the front matter, the specification for those patents  
02:10 19 down below, has everything in it that the '411 patent  
02:10 20 has. But it also has some additional material that  
02:10 21 wasn't in the '411 patent.

02:10 22 Now, of course any time you file either just  
02:10 23 an out-and-out continuation or a continuation-in-part,  
02:10 24 you'll also have new sets of claims that define what  
02:10 25 the patent is trying to scope out in terms of

02:10 1 functionality that it wants to describe.

02:10 2 Q. All right. Turning to the -- sort of the body  
02:10 3 of the patents, what is shown on this slide here? What  
02:10 4 are you intending to convey?

02:10 5 A. Well, what I'm intending to convey is that the  
02:10 6 menu cascade and associated breadcrumb that gets formed  
02:10 7 along with it --

02:10 8 THE WITNESS: And if Mr. Thompson will  
02:10 9 click his way through the various elements, we'll pick  
02:10 10 an item underneath the first level. And then we'll  
02:11 11 pick an item in the second level. And ultimately we'll  
02:11 12 wind up with an item on the third level.

02:11 13 A. And when we click that, what we'll do is we'll  
02:11 14 wind up with a breadcrumb, as shown on the right-hand  
02:11 15 side, where the number of elements and the names or  
02:11 16 labels for those elements are the same from one to the  
02:11 17 other.

02:11 18 And let me also correct myself on something.  
02:11 19 I think I may have said "click" somewhere before I got  
02:11 20 to the last item. I apologize for that. That was a  
02:11 21 mistake. We have to hover, or hold the mouse cursor  
02:11 22 over things as we're moving through the cascade. And  
02:11 23 we don't actually click till the end. I'm sorry. I  
02:11 24 misspoke on that.

02:11 25 BY MR. JENSEN:

02:11 1 Q. And so in Figure 6B on the right side of the  
02:11 2 screen, is what is shown there a -- I'll call it a  
02:11 3 Hansel and Gretel breadcrumb, as you explained?

02:11 4 A. Yes. It is.

02:11 5 Q. And does that breadcrumb have any additional  
02:12 6 functionality in the context of the asserted patents?

02:12 7 A. Yes. It does. And it's shown here in Figure  
02:12 8 5c where we see that we can hover over any of the  
02:12 9 active links in the top line of the breadcrumb and get  
02:12 10 the cascade to open from whichever one of those links  
02:12 11 that we pick and then navigate the cascade from there.

02:12 12 Q. And the title of this slide that you put up  
02:12 13 there was "Active Path"; is that correct?

02:12 14 A. Yes. What I'm essentially saying is that --

02:12 15 THE WITNESS: Mr. Thompson, would you  
02:12 16 mind going back to that last slide, please?

02:12 17 A. What I'm saying is that the Active Path is the  
02:12 18 breadcrumb plus the menu cascade or collapsing menus  
02:12 19 that we can open up from that breadcrumb through the  
02:12 20 active links that make it up.

02:12 21 BY MR. JENSEN:

02:12 22 Q. And in the figure on the screen right now, how  
02:13 23 many active links are there that comprise the Active  
02:13 24 Path?

02:13 25 A. I see four.

02:13 1 Q. And that matches up on the previous slide with  
02:13 2 the four links kind of under the Item 100?

02:13 3 A. Yes. It does. You can see it best by looking  
02:13 4 to your right at the multi-colored items there.

02:13 5 Q. And we've heard the term, I think, "Active  
02:13 6 Path" a number of times throughout this trial, correct?

02:13 7 A. Yes. We have.

02:13 8 Q. Is that term a term for which the Court  
02:13 9 provided a claim construction or definition?

02:13 10 A. Yes. It is. And, in fact, that definition is  
02:13 11 shown underneath the term on the left-hand side of the  
02:13 12 slide. And the Court defined an Active Path as: A  
02:13 13 sequence of links that is dynamically created as a menu  
02:13 14 system is navigated.

02:13 15 And the reason why I highlighted "dynamically  
02:13 16 created" is because you build the breadcrumb as you  
02:14 17 hover through the cascade and move down to the next  
02:14 18 level. And that's how you're navigating the menu  
02:14 19 system.

02:14 20 Q. Did you apply the Court's definition when  
02:14 21 forming your opinions in this case?

02:14 22 A. Yes. I did.

02:14 23 Q. Let's take a look now at -- this is Claim 1 of  
02:14 24 the '301 patent. And that's one of the asserted claims  
02:14 25 in this case, correct?



02:14 1 A. Yes. It is.

02:14 2 Q. And could you just kind of walk the jury  
02:14 3 through what the -- I'll just put it all on the screen  
02:14 4 here.

02:14 5 Could you just walk the jury through what the  
02:14 6 various elements of Claim 1 are for the '301 patent?

02:14 7 A. Yes. The first portion of a multistep claim,  
02:14 8 a method claim in this case, for example, is what's  
02:14 9 called the preamble, and that just basically means the  
02:14 10 beginning.

02:14 11 And in this preamble, what we're talking about  
02:14 12 is a method, which means it's something that has to be  
02:15 13 performed step-by-step in order to be satisfied. We're  
02:15 14 talking about a method for navigating that set of  
02:15 15 cascading entries that we saw, navigating from the  
02:15 16 graphical user menu, where each level in the  
02:15 17 information structure has more than one element in it,  
02:15 18 and each one of those items is either a function, a  
02:15 19 pointer to a location, or a pointer to another level.  
02:15 20 And then we get into the steps we have to follow.

02:15 21 So that's where the colored Nos. 1 through 3  
02:15 22 come into play, where the first one is essentially all  
02:15 23 about what's involved in providing a graphical user  
02:15 24 menu system where it actually displays items from a  
02:15 25 given level of the hierarchical information structure

02:15 1 that can be selected.

02:15 2 The second claim element, which is labeled 2  
02:16 3 here on the slide, talks about dynamically constructing  
02:16 4 an Active Path -- and remember, that's something that  
02:16 5 the Court gave us a definition for -- which is a  
02:16 6 sequence of active links as items are selected, where  
02:16 7 there's a one-to-one correspondence between the items  
02:16 8 that are selected and the items that show up in the  
02:16 9 path, the Active Path, or the resulting breadcrumb.

02:16 10 And then finally, it says that each active  
02:16 11 link lets the user open the cascade and start  
02:16 12 navigating from there.

02:16 13 Q. And you were here during Mr. Sherwood's  
02:16 14 testimony where he walked through all of the claims and  
02:16 15 all of the elements one by one.

02:16 16 Do you recall that?

02:16 17 A. Yes. I do.

02:16 18 Q. And I believe at one point he kind of grouped  
02:16 19 various of the claims or claim elements together and  
02:16 20 said these are all, more or less, the same?

02:16 21 A. I remember.

02:16 22 Q. Okay.

02:16 23 MR. JENSEN: Mr. Thompson, could you pull  
02:16 24 up Demonstrative Slide 64 from Mr. Sherwood's  
02:17 25 presentation?

02:17 1 BY MR. JENSEN:

02:17 2 Q. Do you recognize this slide as one of the  
02:17 3 slides presented by Mr. Sherwood?

02:17 4 A. I do, indeed.

02:17 5 Q. And what is the title of this slide?

02:17 6 A. The title of this slide is "Asserted Patents  
02:17 7 Claim Comparison," but what it really is doing is  
02:17 8 taking the first entry at the top of the chart, which  
02:17 9 is the '411, Claim Element 1.2, which would be the  
02:17 10 second claim element beneath the preamble in that  
02:17 11 claim, and saying that all of the other claim elements  
02:17 12 that are listed underneath it -- and I'm not going to  
02:17 13 repeat them for you because you can read as well as I  
02:17 14 can -- and saying that they're all substantially enough  
02:17 15 like each other that if we take care of one, we take  
02:18 16 care of the other ones too.

02:18 17 Q. And what particular limitation is highlighted,  
02:18 18 at least in the first two entries of this slide?

02:18 19 A. Both of them mention an Active Path. And, in  
02:18 20 fact, if you look at the remaining elements in the  
02:18 21 list, you'll see that they also mention an Active Path.

02:18 22 Q. Is it correct that all of the asserted claims  
02:18 23 in this case require an Active Path?

02:18 24 A. Yes. It is.

02:18 25 Q. And we can see that here on the screen, all

02:18 1 six patents, the independent claims, each and every one  
02:18 2 of them has the same Active Path requirement?

02:18 3 A. Yes. That's true.

02:18 4 Q. Okay. Thank you.

02:18 5 I think that will save us a lot of time.

02:18 6 A. Let's make it happen.

02:18 7 Q. All right. So we've discussed a little bit  
02:18 8 about the Caddo patents now. Let's move to the next  
02:18 9 module that you have in your slides here, which is the  
02:18 10 Microchip websites.

02:19 11 And can you just kind of summarize for us, or  
02:19 12 walk us through your understanding of what these  
02:19 13 websites are, you know, which ones you analyzed, which  
02:19 14 ones maybe you didn't need to?

02:19 15 A. Sure. I'd be happy to.

02:19 16 THE WITNESS: Thanks, Mr. Thompson, for  
02:19 17 expanding the whole thing. It's a lot easier to talk  
02:19 18 to when we do that.

02:19 19 A. One of the sites that I looked at is what has  
02:19 20 been called the e-commerce site for Microchip. It has  
02:19 21 a URL of microchipdirect.com, and it's been up and  
02:19 22 running since at least 2014. And it was not accused in  
02:19 23 the lawsuit in which we're currently engaged.

02:19 24 There have been multiple different versions of  
02:19 25 microchip.com. The one that predates 2018 is what we

02:19 1 call the legacy website, and it was not accused in this  
02:19 2 suit because it didn't have a breadcrumb or cascading  
02:20 3 menus.

02:20 4 Then there's the old website, which has a  
02:20 5 duration of about fall 2018 to mid-2020 and it was  
02:20 6 accused in this lawsuit.

02:20 7 The redesigned website starts taking over in  
02:20 8 early 2020 and gets really up and running from mid-2020  
02:20 9 to the present, and it was not accused in this lawsuit.

02:20 10 And then, finally, there's the  
02:20 11 microchip.com/forums, which, as you guys have already  
02:20 12 heard repeatedly, is the Forum website, and it too has  
02:20 13 been running since at least 2014 to the present day.  
02:20 14 And it is accused in this suit.

02:20 15 BY MR. JENSEN:

02:20 16 Q. All right. Let's step through each of these,  
02:20 17 and I think we can go through some of these rather  
02:20 18 quickly.

02:20 19 The first is the Microchip e-commerce portal.  
02:20 20 Is this the microchipdirect.com site?

02:21 21 A. Yes. It is.

02:21 22 Q. And I think we've seen that several times.  
02:21 23 Did you, you know, navigate that site and  
02:21 24 visit it as part of your analyses?

02:21 25 A. I did.

02:21 1 Q. Okay. Let's pause on this next one for just a  
02:21 2 moment because I don't think we spent quite as much  
02:21 3 time on it, and this is, I think, what you called the  
02:21 4 legacy website. So before fall of 2018?

02:21 5 A. Yes. That's correct.

02:21 6 Q. Okay. And what do you have shown highlighted,  
02:21 7 kind of on the left there, in that red box?

02:21 8 A. Well, this is what we call a left nav type of  
02:21 9 website, which means essentially we've got a navigation  
02:21 10 menu on the left-hand side of the screen.

02:21 11 Q. Okay. And that implementation is not at issue  
02:21 12 in this case?

02:21 13 A. No. It is not.

02:21 14 Q. And what about the old website?

02:21 15 A. The old website has the combination of a top  
02:21 16 nav or a graphical user menu, which we see up on the  
02:22 17 top bar underneath the address that reads Microchip,  
02:22 18 Products, and so forth from left to right.

02:22 19 And then we see that we've got a breadcrumb  
02:22 20 open on the area beneath the banner there, where we've  
02:22 21 got a breadcrumb that consists of a Home link and a  
02:22 22 Microcontroller link, and we've actually hovered over  
02:22 23 Microcontrollers and cascaded the menu out a level,  
02:22 24 then hovered over Applications, and cascaded the menu  
02:22 25 out yet another level.

02:22 1 Q. And this is one of the websites that you  
02:22 2 analyzed to form your opinions?

02:22 3 A. Yes, sir. It is.

02:22 4 Q. Okay. And I see you've included one of my  
02:22 5 favorite slides, the old house/new house slide.

02:22 6 At some point did Microchip redesign its  
02:22 7 website?

02:22 8 A. Yes. It did.

02:22 9 Q. Okay. And we heard about that just a little  
02:22 10 bit ago from Ms. Mahar?

02:23 11 A. Yes. We did.

02:23 12 Q. And what is shown on this slide?

02:23 13 A. This slide shows the current Microchip  
02:23 14 website, which is also known as the redesigned website,  
02:23 15 that started getting phased in in mid-2020 and is the  
02:23 16 primary source of web pages in the current  
02:23 17 microchip.com website.

02:23 18 Q. And I think you said the mid-2020 time point,  
02:23 19 that was sort of the start of the actual rollout onto  
02:23 20 the Internet and then over time --

02:23 21 A. It was a phased implementation, as Ms. Mahar  
02:23 22 explained, with tens of thousands of pages for them to  
02:23 23 have to convert from the old content management system  
02:23 24 to a new content management system. There's just a lot  
02:23 25 of work involved in crossing all the Is and dotting all

02:23 1 the Ts.

02:23 2 Q. And that was this kind of burndown chart, as  
02:24 3 Ms. Mahar called it, showing the progress?

02:24 4 A. Right. Right.

02:24 5 You can tell Ms. Mahar is a project manager  
02:24 6 because this is a very common project management tool.

02:24 7 And what we see here in this curve is  
02:24 8 essentially the line dropping as we go from left to  
02:24 9 right as the amount of old stuff decreases and, by  
02:24 10 implication, the amount of new stuff increases.

02:24 11 Q. And were you here -- I don't think -- recall  
02:24 12 if it was yesterday or the day before -- when  
02:24 13 Mr. Sherwood testified that he did an analysis of a  
02:24 14 site map at a certain point in time to determine the  
02:24 15 number of old pages that were still on the Internet  
02:24 16 versus the number of redesigned pages?

02:24 17 A. Yes. I did.

02:24 18 Q. Okay. Do you recall at what point in time  
02:24 19 that analysis took place?

02:24 20 A. He said in testimony, and I think the date of  
02:24 21 his expert report is sometime in December of 2021.

02:24 22 Q. Okay. And you had the opportunity to review  
02:25 23 and respond to Mr. Sherwood's report, where he included  
02:25 24 that opinion as to the number of old infringing pages  
02:25 25 that remained live on the Internet in December of 2021?



02:25 1 A. I did.

02:25 2 Q. Did you agree with his analyses?

02:25 3 A. No. I did not.

02:25 4 Q. Did you undertake your own analysis to  
02:25 5 determine the number of old web pages that were on the  
02:25 6 Internet in that time frame?

02:25 7 A. I did. I actually performed some text  
02:25 8 analysis on the four site map files that he got from  
02:25 9 Dynamic Range Labs and kind of did some kicking-out  
02:25 10 activities to get rid of the stuff that couldn't  
02:25 11 possibly infringe and took account of what was left  
02:25 12 over.

02:25 13 Q. Could you describe how you went about that  
02:25 14 analysis to determine the number of old web pages that  
02:25 15 were live on the Internet in December or January of  
02:26 16 this year?

02:26 17 A. Yes. I could.

02:26 18 Essentially what you do when you do an  
02:26 19 analysis like this is you match text strings and then  
02:26 20 you kick out the elements in the file that match the  
02:26 21 text string.

02:26 22 So, for example, Mr. Sherwood learned from  
02:26 23 Cody Miller at DRL that all of the URLs that had an  
02:26 24 en-us in it were new website pages and therefore  
02:26 25 shouldn't be counted. So you just basically write a

02:26 1 filter that goes through the file and removes all of  
02:26 2 the entries that have the en-us string in it.

02:26 3 Then the next thing that I did was to look at  
02:26 4 files that were left over and see what kind of file  
02:26 5 extensions they have.

02:26 6 Like, for example, I knew that the PDF files  
02:26 7 that were in the various directories didn't have any  
02:27 8 navigation on them at all, and so I knew they could be  
02:27 9 kicked out.

02:27 10 There were a number of image files which might  
02:27 11 have an extension like JPEG or GIF or something else  
02:27 12 along those lines, and I knew that they couldn't have  
02:27 13 navigation on them either, so I kicked them out.

02:27 14 And then I found some XML files that didn't  
02:27 15 have navigation on them, and I kicked them out as well.

02:27 16 Q. And what conclusions did you reach at the end  
02:27 17 of this analysis in terms of the number of old web  
02:27 18 pages that remained live on the Internet in January of  
02:27 19 this year?

02:27 20 A. The number of files that was left over was  
02:27 21 under 100.

02:27 22 Q. And that's out of approximately how many?

02:27 23 A. I think that Dr. -- I'm sorry --  
02:27 24 Mr. Sherwood's analysis came up with an initial number  
02:27 25 that was just a little bit north of 10,000.

02:28 1 Q. All right. Let's touch on the Forum website.

02:28 2 And that's shown here on the slide; is that correct?

02:28 3 A. Yes, sir.

02:28 4 Q. And what is your understanding of what the  
02:28 5 Forum website is?

02:28 6 A. Well, it's been described as an online  
02:28 7 community site. And as somebody who earned his stripes  
02:28 8 in the forum world as a sysop on CompuServe starting in  
02:28 9 1988, I also know it's a place where people go to hang  
02:28 10 out with each other to try and learn more stuff, to ask  
02:28 11 for help with problems, and to try to find cool new  
02:28 12 things to play with and mess around with.

02:28 13 Q. And who provides the Forum website software?

02:28 14 A. The Forum website software was developed by a  
02:28 15 company called ASP Playground.

02:29 16 Q. Does the Forum website have the same look and  
02:29 17 feel as the regular microchip.com website?

02:29 18 A. It has the same trade dress and a similar  
02:29 19 color scheme. But other than that, it does not have  
02:29 20 the same look and feel as the main Microchip.

02:29 21 Q. Does it serve the same purpose?

02:29 22 A. No. It does not serve the same purpose.

02:29 23 Q. Does it run the same software?

02:29 24 A. No. It does not run the same software.

02:29 25 Q. Does it contain the same content?

02:29 1 A. No. It does not contain the same content.

02:29 2 Q. All right.

02:29 3 Next, let's turn to your opinions in this  
02:29 4 case. And to start off, can you just summarize at a  
02:29 5 high level what the various topics were that you  
02:29 6 analyzed? I think you told us about noninfringement  
02:29 7 already. But there's several other items listed here.

02:29 8 A. Sure.

02:29 9 You've heard before in testimony in the court  
02:29 10 about something called a noninfringing alternative,  
02:30 11 which is basically something that's -- allows the  
02:30 12 website to keep functioning without diminishing its  
02:30 13 capability, or the kinds of things it can do that was  
02:30 14 available at the same time as the infringement was  
02:30 15 supposed to have started to occur, that you could  
02:30 16 essentially swap out and therefore cease to infringe on  
02:30 17 the asserted patents.

02:30 18 And so the question I was trying to answer  
02:30 19 was, were there noninfringing alternatives? And  
02:30 20 Mr. Sherwood's assertions to the contrary  
02:30 21 notwithstanding, I do think there are some  
02:30 22 noninfringing alternatives. And I'm going to tell you  
02:30 23 about them.

02:30 24 Q. And the Topic No. 3, can you kind of outline  
02:30 25 for us as well what that is all about?

02:30 1 A. Yeah. Comparable licenses basically looks at  
02:30 2 licenses that have been issued that have something to  
02:31 3 do with, in this case, web navigation and trying to  
02:31 4 decide if any of the other licenses that are presented  
02:31 5 for inspection -- and they might come from either  
02:31 6 Microchip or they might come from Caddo -- are enough  
02:31 7 like the patents-in-suit that you can say, yeah, these  
02:31 8 things are technically comparable to each other.

02:31 9 So the answer to my question in this case is,  
02:31 10 are there technically comparable licenses? Yes.

02:31 11 And then finally I took a look at the patent  
02:31 12 benefits that Mr. Sherwood described for the '411  
02:31 13 family of patents. And to answer the question, do I  
02:31 14 agree with the alleged benefits of the patents? The  
02:31 15 answer is no.

02:31 16 Q. All right. So before we turn to the meat of  
02:31 17 your noninfringement opinions, I want to just review a  
02:32 18 basic concept I think the jury has heard a little bit  
02:32 19 about and that I discussed with Mr. Sherwood yesterday.

02:32 20 And I want to ask your understanding of this  
02:32 21 concept. Are you familiar, Mr. Tittel, with what's  
02:32 22 been referred to as the all-elements rule?

02:32 23 A. Yes. I'm familiar enough with it that I'm  
02:32 24 wondering why I forgot to put it on this slide.

02:32 25 Essentially what the all-elements rule refers

02:32 1 to is the idea that when a claim and its preamble  
02:32 2 define a number of different elements, each and every  
02:32 3 one of those elements must be satisfied in order to  
02:32 4 infringe the patent.

02:32 5 So if we have a patent for a soccer ball, for  
02:32 6 example, we can look at the requirements for that  
02:32 7 soccer ball, and we can see as we march through the  
02:32 8 different requirements there in the slide that it fails  
02:32 9 because it is not round.

02:33 10 So essentially we can say the claim is not  
02:33 11 infringed because one of the elements is missing. And  
02:33 12 that's why we call it the all-elements rule.

02:33 13 Q. All right. So we're showing on this slide,  
02:33 14 again, the Claim 1 of the '301 patent. And I wanted to  
02:33 15 ask you, you know, why you have certain elements  
02:33 16 highlighted on this slide, and how does that relate to  
02:33 17 your noninfringement opinions?

02:33 18 And maybe I can focus you a little bit more in  
02:33 19 the preamble, in the yellow highlighting, you've  
02:33 20 highlighted the phrase that states: A method for  
02:33 21 navigating.

02:33 22 A. Yes. That's --

02:33 23 Q. I'm going to call it a website -- a method for  
02:33 24 navigating a website.

02:33 25 A. Yes. And, in fact, all of the independent

02:33 1 claims in all of the asserted patents have -- are  
02:34 2 method claims. So by making a statement that Microchip  
02:34 3 does not infringe this particular claim, I'm  
02:34 4 essentially saying that Microchip doesn't infringe any  
02:34 5 of the claims.

02:34 6 Q. Let me ask you a question. You used a word  
02:34 7 that triggered something for me which is this word  
02:34 8 "method."

02:34 9 A. Yes.

02:34 10 Q. Are you familiar with the concept of a method  
02:34 11 claim?

02:34 12 A. Yes. I am.

02:34 13 Q. And there are other types of claims as well,  
02:34 14 like product claims or apparatus claims?

02:34 15 A. Yes. And system claims as well.

02:34 16 Q. And system claims. Okay. Very good.

02:34 17 Are the claims in this case system claims or  
02:34 18 are they method claims?

02:34 19 A. Well, because -- if you look at the language  
02:34 20 of the patents, and you generally see the word "method"  
02:34 21 mentioned in the preamble of the independent -- of all  
02:34 22 the preambles of the independent claims in all of the  
02:34 23 patents, they are all method.

02:34 24 Q. And what is the significance of the fact that  
02:35 25 these are method claims?

02:35 1 A. A method claim is a claim in which the steps  
02:35 2 of the method must be performed to meet the  
02:35 3 requirements of the claim.

02:35 4 Q. And that could be something like a recipe has  
02:35 5 certain steps. You have to do them in a particular  
02:35 6 order?

02:35 7 A. It could mean that you have to do them in a  
02:35 8 particular order. It could also mean that you just  
02:35 9 need to do all of them. The claim will generally tell  
02:35 10 you if the order is important or not.

02:35 11 Q. Very good.

02:35 12 But in any event, regardless of the order,  
02:35 13 each of the method steps would have to be performed to  
02:35 14 establish an infringement?

02:35 15 A. Yes, sir. That's correct.

02:35 16 Q. Okay. Very good. All right.

02:35 17 And I think you mentioned earlier that, you  
02:35 18 know, with respect to the Forum website, and I suppose  
02:35 19 the other website as well, that somebody -- or, in  
02:35 20 fact, in this case, Microchip would have to perform  
02:35 21 that step or there would not be an infringement; is  
02:35 22 that correct?

02:35 23 A. Correct.

02:35 24 Q. So if somebody else was performing this step,  
02:36 25 you know, a method of navigating a website, would that



02:36 1 be an infringement on the part of Microchip?

02:36 2 A. No, sir. It would not. And Mr. Sherwood also  
02:36 3 testified that Microchip was the one that was  
02:36 4 infringing.

02:36 5 Q. Okay. And you've got, I think, the Item  
02:36 6 No. 2, the second claim element in orange, "dynamically  
02:36 7 constructing," and it looks like that corresponds to  
02:36 8 the note that the old website does not infringe?

02:36 9 A. Right. As we already looked at a little bit  
02:36 10 earlier, each and every one of the independent claims  
02:36 11 in all of the asserted patents includes a requirement  
02:36 12 for an Active Path.

02:36 13 And essentially, what I'm saying is the old  
02:36 14 website does not infringe because it does not have an  
02:36 15 Active Path.

02:36 16 Q. And now, what about the green highlighting  
02:36 17 that corresponds to the note about the Forum?

02:36 18 A. Well, if you look at the number of links in  
02:36 19 the breadcrumbs on the Forum, you'll see that that  
02:37 20 number is different from the number of items that you  
02:37 21 selected when you were navigating through the Forum  
02:37 22 menus.

02:37 23 And the language of this part of the claim  
02:37 24 says "one active link corresponding to each of the  
02:37 25 items selected." And we don't see that correspondence

02:37 1 in the breadcrumbs for the Forum site.

02:37 2 Q. And the last one on this slide, the blue  
02:37 3 highlighting and text.

02:37 4 A. That is about the redesigned website. And as  
02:37 5 you'll recall, the redesigned website does not have any  
02:37 6 drop-down menus anymore. And if we can't browse  
02:37 7 through the breadcrumb to get to the drop-down menus,  
02:37 8 then we can't infringe.

02:37 9 Q. Okay. So depending on the particular website  
02:37 10 that you were looking at, there are different claim  
02:38 11 elements that are not met; is that correct?

02:38 12 A. Yes, sir. That is correct.

02:38 13 Q. All right. Let's look at the old website now,  
02:38 14 and we've touched on this dynamically constructing  
02:38 15 claim requirement, the Active Path claim requirement.

02:38 16 And I just want to put up here a slide that  
02:38 17 you prepared that, again, reflects that every single  
02:38 18 claim in this case requires an Active Path; is that  
02:38 19 correct?

02:38 20 A. Yes. And in case the jury is wondering why we  
02:38 21 don't have some of the other claims that we know are  
02:38 22 being asserted in this case showing up on the chart,  
02:38 23 we've got them covered. It's because they depend on  
02:38 24 one of these independent claims that is shown here that  
02:38 25 they are also covered by the same maneuver that we're

02:38 1 undertaking here.

02:38 2 Q. And is that a -- I'll call it a definitional  
02:38 3 principle? In other words, in every patent case, it's  
02:38 4 always the case that if the independent claim is not  
02:39 5 infringed that the subsequent dependent claims are not  
02:39 6 infringed?

02:39 7 A. Yes. That's correct.

02:39 8 Q. Okay.

02:39 9 A. And here's another repeat of the definition of  
02:39 10 Active Path. And the reason why I underlined the  
02:39 11 "dynamically created" and the "menu system is  
02:39 12 navigated" is I'm going to show you that that doesn't  
02:39 13 happen on the -- Microchip's old website.

02:39 14 Q. And can you just summarize for the jury, you  
02:39 15 know, what aspect of the old website it was that  
02:39 16 Mr. Sherwood kind of mapped to the Active Path or  
02:39 17 accused of being the Active Path?

02:39 18 A. That would be the breadcrumb and the drop-down  
02:39 19 menus that show up in the area underneath the graphical  
02:39 20 user menu with the drop-down menus beneath a breadcrumb  
02:39 21 that reads Home, Automotive Solutions, and Automotive  
02:40 22 Applications.

02:40 23 Q. Do you agree with Mr. Sherwood that the old  
02:40 24 website has an Active Path?

02:40 25 A. No, sir. I do not.

02:40 1 Q. Why not?

02:40 2 A. The Active Path must be dynamically  
02:40 3 constructed. I am preparing to show you that on the  
02:40 4 old Microchip website, the breadcrumb information that  
02:40 5 shows up and the drop-down menus that show up on the  
02:40 6 web pages for that site are created in advance and  
02:40 7 downloaded to the web page as part of the building of  
02:40 8 the web page when it comes up on the site.

02:40 9 Q. And why have you shown this Hansel and Gretel  
02:40 10 image here on the screen?

02:40 11 A. I just want to remind the jury that the  
02:40 12 requirement for a dynamic breadcrumb is that it be  
02:40 13 constructed as the user takes each step on a path and  
02:41 14 therefore that it track precisely each step that was  
02:41 15 taken.

02:41 16 If you think back to that slide I had earlier  
02:41 17 in the tutorial, we had the three different ways to get  
02:41 18 from A to G. Essentially, that means if I took the  
02:41 19 middle path, I should see the links that I went through  
02:41 20 on the middle path in the breadcrumb. And that's not  
02:41 21 the way the old website works for Microchip.

02:41 22 Q. And I think you used the term kind of "static  
02:41 23 path" and, you know, "dynamic path" or "dynamically  
02:41 24 created active path."

02:41 25 A. Yes.

02:41 1 Q. Can you help the jury understand the  
02:41 2 difference between those two types of paths?

02:41 3 A. I certainly will.

02:41 4 THE WITNESS: Mr. Thompson, will you go  
02:41 5 ahead -- yeah. Thank you.

02:41 6 A. Essentially, the difference between a static  
02:41 7 path and a dynamic path is that a static path is always  
02:41 8 the same. It's decided in advance. It doesn't get  
02:42 9 created as we drop our breadcrumbs like Hansel and  
02:42 10 Gretel did, and it's manually created.

02:42 11 As Ms. Mahar testified, they had to sit there  
02:42 12 putting all those links together and taking hundreds of  
02:42 13 person hours and lots of time to actually manually  
02:42 14 create that stuff.

02:42 15 A dynamic path, on the other hand, it tracks  
02:42 16 the menu choices as those choices get made. It happens  
02:42 17 when those choices get made, which is what I mean when  
02:42 18 I say it's built in real time.

02:42 19 And then, finally, it's automatically created  
02:42 20 as part of the software so that each time you make a  
02:42 21 selection and go down and collapse the cascade and  
02:42 22 create a new breadcrumb, the elements that you have  
02:42 23 selected to get where you are, are what shows up in  
02:42 24 that breadcrumb.

02:42 25 BY MR. JENSEN:

02:43 1 Q. And what evidence do you have that the old  
02:43 2 Microchip website does not infringe because it uses a  
02:43 3 static-path approach?

02:43 4 A. I looked at multiple sources of evidence to  
02:43 5 come to this conclusion. I examined the behavior of  
02:43 6 the old website. And, fortunately, I got involved last  
02:43 7 September or thereabouts, when there were still enough  
02:43 8 of those old pages around that you could find them  
02:43 9 easily and make them do their thing.

02:43 10 The second thing was I looked at the DRL  
02:43 11 report that basically said that they noticed that there  
02:43 12 were often occurrences where the navigation path and  
02:43 13 the breadcrumb didn't match.

02:43 14 I also looked at transcripts from Microchip  
02:43 15 employees to -- that explain that a hard-coded approach  
02:44 16 was used, and that basically is the manual stuff that  
02:44 17 Ms. Mahar was telling you about.

02:44 18 And then, finally, as I will show you a little  
02:44 19 bit later on, there's actual source code in the  
02:44 20 Microchip system that shows you those -- all of those  
02:44 21 menu entries in a data block, where you can see that  
02:44 22 information there, and that's what gets sent from the  
02:44 23 server to the client. So we know that it's all figured  
02:44 24 out in advance.

02:44 25 Q. And have you prepared a slide or two on each

02:44 1 of these points?

02:44 2 A. Gosh. I hope that's what we're going to next.

02:44 3 Q. All right. So this is an image from the

02:44 4 Defendant's Exhibit 463.

02:44 5 MR. JENSEN: And I think I'd like to ask

02:44 6 Mr. Thompson to just pull up Exhibit 463.

02:44 7 BY MR. JENSEN:

02:44 8 Q. And this is the video I think we've seen

02:44 9 before, but I would like to walk through it with your

02:44 10 explanation and narration as to what was going on.

02:45 11 A. You bet.

02:45 12 Q. While he's pulling that up --

02:45 13 MR. JENSEN: And maybe hit pause,

02:45 14 Mr. Thompson, for just a moment.

02:45 15 BY MR. JENSEN:

02:45 16 Q. I think a few minutes ago, Ms. Mahar was asked

02:45 17 if she knew, you know, where this video came from or

02:45 18 who had prepared it, and she didn't know.

02:45 19 Do you recall that?

02:45 20 A. I do.

02:45 21 Q. Do you know where this video came from?

02:45 22 A. Yes. I know where this video came from.

02:45 23 Q. Where did this video come from?

02:45 24 A. Well, I found this path on the microchip.com

02:45 25 website in late September. And in connection with

02:45 1 preparing materials for a disclosure that was to be  
02:45 2 made to the other side in this case, I worked with Matt  
02:45 3 Bonini, who's one of the paralegals at Mr. Jensen's law  
02:45 4 firm, and we figured out how to capture the various  
02:45 5 steps that you're about to see in video form so that it  
02:45 6 kind of animates what's going on.

02:45 7 MR. JENSEN: With that background,  
02:45 8 Mr. Thompson, why don't you go ahead and play the clip?  
02:45 9 BY MR. JENSEN:

02:46 10 Q. And, Mr. Tittel, you can just kind of talk us  
02:46 11 through what we're seeing and why this supports your  
02:46 12 opinion.

02:46 13 A. Sure.

02:46 14 THE WITNESS: And, Mr. Thompson, I'm  
02:46 15 going to ask you to pause from time to time. So keep  
02:46 16 your wits about you.

02:46 17 A. All right. So what we're seeing now is the  
02:46 18 URL being typed in so that we can get to Microchip in  
02:46 19 the first place.

02:46 20 And then the next thing that's going to  
02:46 21 happen --

02:46 22 THE WITNESS: And let's go ahead and  
02:46 23 pause.

02:46 24 A. -- is we're going to open the homepage. And  
02:46 25 as soon as the homepage opens, we start navigating, as



02:46 1 you see on the graphical user interface at the top of  
02:46 2 this screen, which is why it's often called top nav.

02:46 3 So we're navigating the top nav.

02:46 4 THE WITNESS: Okay. Let her rip,  
02:46 5 Mr. Thompson.

02:46 6 A. Then we go to Solutions, then we go to Tools  
02:46 7 and Software.

02:46 8 THE WITNESS: Stop, Mr. Thompson.

02:46 9 A. Now, what we do when we get to Tools and  
02:46 10 Software is we start mousing around inside the  
02:46 11 drop-down menu for Tools and Software.

02:47 12 And, essentially, what we're doing is we're  
02:47 13 looking to pick an item in the second-level hierarchy  
02:47 14 so that we can drill down in the content that's  
02:47 15 available on the microchip.com website. And in this  
02:47 16 case, we're going to go to the Embedded Software  
02:47 17 Center.

02:47 18 THE WITNESS: Okay. Let her rip,  
02:47 19 Mr. Thompson.

02:47 20 Hold it right there.

02:47 21 A. When we get into the Embedded Software Center,  
02:47 22 we see there's a number of different options there, and  
02:47 23 we're picking one called the MPLAB® Connect  
02:47 24 Configurator, which we know from the title of the  
02:47 25 group, Embedded Software Center, is a collection of

02:47 1 different kinds of software that Microchip makes  
02:47 2 available to its customers to help them visualize,  
02:47 3 analyze, model, and do other things to help -- to make  
02:47 4 better use of their products.

02:47 5 THE WITNESS: So let's go ahead and click  
02:47 6 on that MPLAB® Connect Configurator. Hold it right  
02:48 7 there.

02:48 8 A. Now, we know that what happens when we click  
02:48 9 on the result of a menu cascade, as you just saw there,  
02:48 10 we're going to collapse all the menus -- you see  
02:48 11 they're gone -- and then we're going to have a  
02:48 12 breadcrumb show up on the top of the page.

02:48 13 And if you look at the elements in that  
02:48 14 breadcrumb, you must recall that we didn't visit either  
02:48 15 Interface and Connectivity or USB in the trail that we  
02:48 16 just took to get to the MPLAB® Connect Configurator.

02:48 17 Now, obviously this is another valid path  
02:48 18 through the website to get you to that web page,  
02:48 19 because that's the web page that's showing. But it's  
02:48 20 not the path that we took.

02:48 21 And what we're going to be doing in the next  
02:48 22 part of the presentation that we look at is I'm going  
02:48 23 to be telling you why that's so. You've already gotten  
02:48 24 a taste of why that's so from Ms. Mahar's testimony.  
02:49 25 I'm going to show you in detail.

02:49 1 BY MR. JENSEN:

02:49 2 Q. And how many links are present in the path  
02:49 3 that's highlighted in red?

02:49 4 A. Four.

02:49 5 Q. And how many selections were made from the top  
02:49 6 navigation menu?

02:49 7 A. Three.

02:49 8 MR. JENSEN: Mr. Thompson, you can go  
02:49 9 ahead and take that down.

02:49 10 BY MR. JENSEN:

02:49 11 Q. And what is shown on this slide? Is it just a  
02:49 12 kind of still screen image comparing the --

02:49 13 A. Yeah. Essentially what we're doing is we're  
02:49 14 showing you what we went through on the left-hand side,  
02:49 15 and we're showing you what pops up as the result when  
02:49 16 the menus collapse and the selected page pops up.

02:49 17 Q. And was this just a, you know, like a  
02:49 18 cherry-picked example, Mr. Tittel, of how the old  
02:49 19 website operated?

02:49 20 A. Well, we heard testimony from Ms. Mahar, and  
02:50 21 we also heard testimony from Mr. Sherwood, that there  
02:50 22 were numerous pages on the microchip.com website, a  
02:50 23 number that the burndown chart shows us has been  
02:50 24 steadily declining over time. But that there were  
02:50 25 pages on the site that continued to show this behavior.

02:50 1 Q. And what evidence do you have that this was  
02:50 2 not a kind of a one-off exception to how the old  
02:50 3 website operated?

02:50 4 A. Well, when I conducted my count of pages that  
02:50 5 were left over from the old website, I still found some  
02:50 6 left over. Although I can't find any more now. And  
02:50 7 also because we can see certain pages where things  
02:50 8 don't match up.

02:50 9 Q. So did you personally navigate and identify  
02:50 10 some number of old website pages that demonstrated this  
02:51 11 static path functionality?

02:51 12 A. Yes.

02:51 13 Q. Okay. Do you have any other third-party  
02:51 14 documentation that confirmed your initial findings?

02:51 15 A. Yes. Well, we've seen the report -- or,  
02:51 16 actually, reports from DRL where the first one shows  
02:51 17 that navigation on the page doesn't match top  
02:51 18 navigation. And then we saw the later design guide  
02:51 19 where they were trying to solve that problem by going  
02:51 20 to what they called a real breadcrumb.

02:51 21 Q. And how frequently did DRL say this problem  
02:51 22 manifested itself?

02:51 23 A. Well, what they say is "often." They don't  
02:51 24 actually specify a number. But they say -- to me  
02:51 25 "often" means enough to notice, but not everything.

02:51 1 Q. And let me ask a follow-up question on that.  
02:51 2 It sounds like, you know, often there would be a  
02:51 3 mismatch between the breadcrumb and the path that was  
02:52 4 navigated, but not always; is that correct?

02:52 5 A. Yes. That's essentially what I just said.

02:52 6 Q. And what about in the circumstance where the  
02:52 7 path does match on the old website? Is it your opinion  
02:52 8 that that would be an Active Path or an infringement of  
02:52 9 the asserted claims?

02:52 10 A. No. I will show you that it remains static  
02:52 11 whether it matches or not. I would say that if it did  
02:52 12 match, it was kind of like you won the scratch-off or  
02:52 13 something. Not a big one, but you hit it.

02:52 14 Q. All right. And what's the third point that  
02:52 15 you have on your summary slide here?

02:52 16 A. Well, we heard in Ms. Mahar's testimony here  
02:52 17 in the courtroom, and there's actually a transcript of  
02:52 18 a deposition called the 30(b)(6) deposition where she  
02:52 19 testified about "hard coding paths." And she talked  
02:52 20 about the manual effort involved in doing that work,  
02:52 21 and the fact that she actually did some of the typing  
02:53 22 herself.

02:53 23 Q. And why was this hard-coded or, you know,  
02:53 24 fixed static-path approach used by Microchip?

02:53 25 A. Well, I can't do any better than to repeat

02:53 1 Mrs. Mahar explanation, which is that they were putting  
02:53 2 a Band-Aid on a building that was getting ready to fall  
02:53 3 down. And essentially what they did was they looked at  
02:53 4 how the left nav on the website was built and they  
02:53 5 figured out how to turn it into a horizontal  
02:53 6 equivalent.

02:53 7 And what that ended up meaning is that  
02:53 8 sometimes it matched and sometimes it didn't. And it  
02:53 9 kind of depended on where you were navigating and what  
02:53 10 was in the left nav before it got translated into its  
02:53 11 horizontal equivalent.

02:53 12 Q. Even in those instances where there would be a  
02:53 13 superficial match, I'll call it, was the static-path  
02:53 14 approach still used on the old website?

02:53 15 A. Yes. They did not build breadcrumbs  
02:53 16 dynamically. And, again, we'll be looking at a data  
02:54 17 structure that shows the content of those items  
02:54 18 shortly. And they didn't track what the user was  
02:54 19 doing. Once you got to a page, you looked up what path  
02:54 20 was associated with it and a link that matched.

02:54 21 Q. Do you think that a static-path approach is a  
02:54 22 good approach to create a breadcrumb?

02:54 23 A. It is a God-awful way to do it.

02:54 24 (Laughter.)

02:54 25 BY MR. JENSEN:

02:54 1 Q. All right. Let's take a look at the fourth  
02:54 2 bullet point that you have here, the source code. And  
02:54 3 what can you tell us about that? And what code did you  
02:54 4 look at? What was the analysis that you went through?

02:54 5 A. Well, I got a number of files from the  
02:54 6 information that was shared with Caddo. And in looking  
02:54 7 at those files, I discovered a data structure that  
02:55 8 includes the content of the menus.

02:55 9 Q. And this was the source code for which website  
02:55 10 that you're talking about here?

02:55 11 A. This is the old microchip.com website.

02:55 12 Q. And what did the source code reveal,  
02:55 13 Mr. Tittel?

02:55 14 A. Well, among other things, I found a comment  
02:55 15 that explained how they were transitioning from what  
02:55 16 we've called the legacy site, or the site before they  
02:55 17 did the old website conversion. And it says that they  
02:55 18 are performing a number of presentation changes to the  
02:55 19 way things get laid out on the web page to make changes  
02:55 20 to remove the left navigation and make the breadcrumbs  
02:55 21 work. This is not actually code. It's just a comment.

02:55 22 Q. And how do you know that this source code  
02:55 23 relates to the old website as opposed to the redesigned  
02:55 24 website?

02:55 25 A. Well, I can tell you in two ways, actually.

02:56 1 We know that the old website ran on the Sitefinity  
02:56 2 content management system. And if you look at the --  
02:56 3 above the middle of the URL there, the word  
02:56 4 "Sitefinity" shows up.

02:56 5 And I happen to know that Sitefinity has a  
02:56 6 number of file extensions that tell you what the  
02:56 7 content management system is going to do. And if you  
02:56 8 look at the end of that file, it says SCSS. Well,  
02:56 9 that's not actually a valid web file extension, but it  
02:56 10 is a valid file extension inside of Sitefinity.

02:56 11 And, basically, what it means is this is a  
02:56 12 Sitefinity file that's going to create a CSS style  
02:56 13 sheet that I'm going to send to a browser somewhere  
02:56 14 after I fiddle around with its innards a little bit.

02:56 15 Q. Have you written CSS style sheets before,  
02:56 16 Mr. Tittel?

02:56 17 A. Yes. I actually -- I can't -- I think I've  
02:56 18 written two books on CSS.

02:56 19 Q. Very good.

02:57 20 MR. JENSEN: Mr. Thompson, could you  
02:57 21 bring up Defendant's Exhibit 205, please?

02:57 22 BY MR. JENSEN:

02:57 23 Q. And, Mr. Tittel, what are we looking at here  
02:57 24 in Defendant's Exhibit 205?

02:57 25 A. This is an HTML file that's getting loaded



02:57 1 down to a web page. And it begins with a huge  
02:57 2 JavaScript that has a boatload of data in it that's  
02:57 3 going to be used to build the web page. And I think  
02:57 4 this page is something like 30 or 40 pages long.

02:57 5 THE WITNESS: Mr. Thompson, can you give  
02:57 6 us an indication of the size of this file?

02:58 7 A. 32 pages long. Okay. Let's go back to the  
02:58 8 beginning.

02:58 9 BY MR. JENSEN:

02:58 10 Q. And was this one of the source code files that  
02:58 11 you reviewed in conducting your analysis?

02:58 12 A. Yes. It is.

02:58 13 Q. And what did you learn from this file about  
02:58 14 the operation or implementation of the old website as  
02:58 15 it relates to the static path?

02:58 16 A. I'm going to show you.

02:58 17 THE WITNESS: Mr. Thompson, please jump  
02:58 18 us to Line 80 of the file.

02:58 19 A. Now, it won't take you long to figure out that  
02:58 20 Line 80 isn't really a line. It's a huge chunk of  
02:58 21 data. And it goes on for, like, pages and pages and  
02:58 22 pages, but --

02:58 23 THE WITNESS: You can stop it right  
02:58 24 there, Mr. Thompson.

02:58 25 A. If you look at what's inside that data block,

02:58 1 what do you see? After you get through a bunch of  
02:58 2 introductory stuff, you see a bunch of items that say  
02:58 3 "title" and then "link."

02:59 4 And if you keep reading down and looking at  
02:59 5 the difference between the title entries and the link  
02:59 6 entries, you'll see that the title displays the text  
02:59 7 that shows up in the whole breadcrumb. And then the  
02:59 8 link that follows afterward is a URL that -- oh, I  
02:59 9 should say a partial URL because we know some things  
02:59 10 about what it's going to look like when it gets fully  
02:59 11 built, so we don't actually have to include all of it.

02:59 12 We know that all of these are going to start  
02:59 13 with <https://www.microchip.com>. And so we'd only capture  
02:59 14 the part that comes after that. And that's what's in  
02:59 15 there.

02:59 16 And if you look at those URLs, those are the  
02:59 17 URLs that show up on the web page. And if you look at  
02:59 18 the title, that's the title that shows up for that page  
02:59 19 when you open it up.

02:59 20 And furthermore, this is the stuff -- and I  
03:00 21 just shudder to think of it -- this is the stuff that  
03:00 22 Ms. Mahar and her team had to key in by hand in order  
03:00 23 to put this data into the database so that this page  
03:00 24 could be put together and then shipped to the user to  
03:00 25 be set up.

03:00 1 And the reason that I say it's static and that  
03:00 2 it doesn't track dynamic user activity is that  
03:00 3 everything's in here. It's deferring in advance. And  
03:00 4 it doesn't matter what the user clicks on to get from  
03:00 5 the top of the microchip.com website to wherever they  
03:00 6 wind up. Because they're going to be using the text  
03:00 7 from the title part of this data block, and they're  
03:00 8 going to be using the fully-expanded URL version of the  
03:00 9 link part from this data block.

03:00 10 BY MR. JENSEN:

03:00 11 Q. Was this an efficient way to implement a path  
03:00 12 menu on a website?

03:00 13 A. No.

03:00 14 Q. And why is that?

03:00 15 A. Well, where to begin? As Ms. Mahar has  
03:01 16 explained, when you do things this way, you have to  
03:01 17 keep up with it by hand. Nobody -- I mean, computers  
03:01 18 are there to take over the repetitive and mindless  
03:01 19 drudgery of making stuff like this happen. That's one  
03:01 20 reason.

03:01 21 Another reason is this thing's pretty big.

03:01 22 MR. JENSEN: And, Mr. Thompson, could you  
03:01 23 just scroll down? I'd like to --

03:01 24 A. Yeah. It's 32 pages long.

03:01 25 BY MR. JENSEN:

03:01 1 Q. -- see how -- yeah, this particular line.

03:01 2 Line 80?

03:01 3 A. Yeah. 32 pages long. Which means tens of  
03:01 4 thousands of characters. And when you have that much  
03:01 5 data, you have to transfer it from the server to the  
03:01 6 client. And it takes time to do that. And that's not  
03:01 7 going to help the load time -- page load times improve.

03:01 8 And we already know from Ms. Mahar that one of  
03:01 9 the problems they had with their site was that the page  
03:01 10 load times were too long. I think we're looking at one  
03:01 11 of the reasons why.

03:01 12 Q. Would it be necessary to download this amount  
03:02 13 of information if a website used a dynamic path  
03:02 14 approach?

03:02 15 A. To do a dynamic breadcrumb would involve  
03:02 16 probably 1 percent of this amount of data.

03:02 17 MR. JENSEN: Why don't we exit out of  
03:02 18 this, Mr. Thompson, and go back to the slides?

03:02 19 BY MR. JENSEN:

03:02 20 Q. Did you want to comment further on the source  
03:02 21 code here or -- it's in your slides, so I don't want to  
03:02 22 cut you off, but...

03:02 23 A. Well, this is the breadcrumb navigation file  
03:02 24 that actually ends up calling the other file, and  
03:02 25 that's just to show you it's part of the overall

03:02 1 software chain.

03:02 2 Q. And what have you blown up here on this slide  
03:02 3 out of the source code?

03:02 4 A. This is where we're walking through and  
03:02 5 grabbing things to put all the -- the information that  
03:03 6 we're downloading from the server to the client that we  
03:03 7 looked at in the other file is -- you could see it was  
03:03 8 not complete and it wasn't perfectly formatted.

03:03 9 This is actually doing the work to go through  
03:03 10 and create the stuff that's going to allow the cascade  
03:03 11 to appear on screen, and then to allow the associated  
03:03 12 link to be invoked when we select one of those items.

03:03 13 Q. Let me see if I understood this correctly.  
03:03 14 This file here sort of pretties up and makes  
03:03 15 presentable the content from the Exhibit --

03:03 16 A. Well, that's one way of putting it. Another  
03:03 17 way of putting it would be to say it's what makes --  
03:03 18 it's what turns the data into stuff that's going to  
03:03 19 work on the web page. Because all we have really in  
03:03 20 the other item is a bunch of raw data, and we have to  
03:03 21 turn it into the format and the kinds of strings that  
03:04 22 work in a web browser. And this drives that process.

03:04 23 Q. Okay.

03:04 24 MR. JENSEN: I would like to move the  
03:04 25 admission of Defendant's Exhibit 205.

03:04 1 MR. DEVLIN: Sorry. Was 205 the code?

03:04 2 MR. JENSEN: That was the HTML that we  
03:04 3 were just looking at.

03:04 4 MR. DEVLIN: The Line 80 thing?

03:04 5 MR. JENSEN: The Line 80 thing.

03:04 6 MR. DEVLIN: Yeah. No objection. Thank  
03:04 7 you.

03:04 8 THE COURT: It'll be admitted.

03:04 9 BY MR. JENSEN:

03:04 10 Q. Could you summarize for us now, Mr. Tittel,  
03:04 11 your conclusions and findings as it related to the old  
03:04 12 website?

03:04 13 A. Sure. Essentially, what I'm saying is that  
03:04 14 the old website's breadcrumb paths were not dynamic,  
03:04 15 that they were hard-coded or established in advance.  
03:04 16 They're static, they don't change, and this is not the  
03:04 17 same thing as dynamically created.

03:04 18 That means also that the paths don't change if  
03:05 19 the user's selection changed. No matter which path you  
03:05 20 take to get from the starting point to the ending  
03:05 21 point, the path that's in that data block is going to  
03:05 22 be the one that shows up in the breadcrumb.

03:05 23 So that's why, of course, the paths don't  
03:05 24 always --

03:05 25 THE WITNESS: Please go back to the

03:05 1 previous slide, Mr. Thompson.

03:05 2 A. -- these paths don't always reflect how a user  
03:05 3 got where they are from where they started.

03:05 4 And because they come from the database from a  
03:05 5 data structure that was defined a while back, I sort of  
03:05 6 took a little bit of poetic license and say the paths  
03:05 7 were created a long time ago, but that's in computer  
03:05 8 time, not necessarily in human time. But they're  
03:05 9 definitely not created as the menu system is navigated.

03:05 10 BY MR. JENSEN:

03:05 11 Q. And what does that mean in the context of the  
03:05 12 asserted claims in this case?

03:05 13 A. It means that they can't be infringed because  
03:05 14 all of the claims require an Active Path and an Active  
03:06 15 Path is dynamically constructed.

03:06 16 Q. Thank you.

03:06 17 All right. So you've covered the old website  
03:06 18 at this point.

03:06 19 And did you undertake an analysis of the  
03:06 20 redesigned website?

03:06 21 A. Yes. I did.

03:06 22 MR. JENSEN: Let's take a look at that.

03:06 23 BY MR. JENSEN:

03:06 24 Q. And I think we've seen this slide before. Why  
03:06 25 don't we jump -- well, let me just ask this question:

03:06 1 Did the redesigned website operate the same as or  
03:06 2 differently than the old website in relevant part to  
03:06 3 this case?

03:06 4 A. It operates differently.

03:06 5 Q. Okay. How so?

03:06 6 A. As we're about to see, on the old website, if  
03:06 7 you hovered over elements in the breadcrumb, you would  
03:06 8 get a drop-down menu. When you hover over elements in  
03:06 9 the breadcrumb on the new website or the redesigned  
03:06 10 website, you don't get a drop-down menu.

03:06 11 MR. JENSEN: Mr. Thompson, can you pull  
03:07 12 up the redesigned website in a web browser, please?

03:07 13 And this will be microchip.com.

03:07 14 A. Internet's slow.

03:07 15 Okay. There we are.

03:07 16 So we want to go to the Products one; is that  
03:07 17 correct?

03:07 18 BY MR. JENSEN:

03:07 19 Q. Take your pick.

03:07 20 THE WITNESS: Let's go to Clock and  
03:07 21 Timing. Let's go to Atomic Clocks. And let's go to  
03:07 22 Embedded Atomic Oscillators.

03:07 23 A. Hey. Look at that. Little chips that do  
03:07 24 interesting things.

03:08 25 Notice that exactly what we clicked is exactly



03:08 1 what shows up in the breadcrumb that's beneath the top  
03:08 2 nav there.

03:08 3 As Mr. Thompson is hovering the mouse over the  
03:08 4 various elements of the breadcrumb, we'll notice two  
03:08 5 things. One of them is that nothing happens when we  
03:08 6 hover over them in terms of menus jumping out.

03:08 7 The other thing is that the final entry in the  
03:08 8 list is a -- what's called a "leaf note," and it  
03:08 9 doesn't do anything. It's just a document that we've  
03:08 10 reached the end of the line as far as the breadcrumb  
03:08 11 trails go. And we don't see any brothers or sisters to  
03:08 12 that web page in this display.

03:08 13 BY MR. JENSEN:

03:08 14 Q. And did Mr. Sherwood testify that he believed  
03:08 15 the redesigned website infringed the Caddo patents?

03:08 16 A. At trial, he did not.

03:08 17 Q. Okay. And what conclusion did you reach as to  
03:09 18 infringement of the redesigned website?

03:09 19 MR. JENSEN: And you can take that down,  
03:09 20 Mr. Thompson.

03:09 21 A. I also reached the conclusion that it did not  
03:09 22 infringe.

03:09 23 BY MR. JENSEN:

03:09 24 Q. And in terms of the claim language, let's see  
03:09 25 if we can take a look at what element it was that was

03:09 1 not satisfied.

03:09 2 A. It's the one at the end of Claim 1 of the '301  
03:09 3 that requires the user to be able to browse all items  
03:09 4 on any level of the hierarchical information structure.

03:09 5 So basically what that means in English is if  
03:09 6 you hover the mouse over one of the elements of the  
03:09 7 breadcrumb, a menu's supposed to pop down. And it  
03:09 8 doesn't do that on the redesigned website.

03:09 9 Q. And we're looking here at Claim 1 of the '301  
03:09 10 patent?

03:09 11 A. Yes. That's right.

03:09 12 Q. Do all of the other asserted claims in this  
03:09 13 case across the six asserted patents have a -- have the  
03:10 14 same or a similar requirement?

03:10 15 A. Yes. They do.

03:10 16 Q. Okay. And is your opinion as to  
03:10 17 noninfringement the same for all of the asserted claims  
03:10 18 in this case?

03:10 19 A. It is.

03:10 20 Q. Okay.

03:10 21 A. And this is just showing you that the active  
03:10 22 link opens up a hierarchical menu when you mouse over  
03:10 23 the link itself, and then you can mouse around in the  
03:10 24 cascade until you select something. And that's what  
03:10 25 the redesigned Microchip website does not have.

03:10 1 Q. Okay. So this is an example of something in  
03:10 2 the patent that is not present in the redesigned  
03:10 3 website?

03:10 4 A. Correct.

03:10 5 Q. And is it your opinion and testimony here  
03:10 6 today, Mr. Tittel, that the all-elements rule is not  
03:10 7 satisfied by the redesigned website?

03:11 8 A. Yes. As I just explained, because we can't  
03:11 9 satisfy the requirements of the final term of the  
03:11 10 claim, the claim is not infringed.

03:11 11 Q. All right. That was much shorter than the old  
03:11 12 website analysis.

03:11 13 All right. Let's see if we can finish up this  
03:11 14 segment here by looking at the Forum website.

03:11 15 A. Here we go.

03:11 16 Q. And what are you showing on this slide?

03:11 17 A. What I'm showing on this slide is, first of  
03:11 18 all, that the method portion of the claim is not met by  
03:11 19 Microchip; that other people are using the Forum site.

03:11 20 And so a method claim requires that the same  
03:11 21 actor perform all steps of the method. And if  
03:11 22 Microchip is not the actor, Microchip cannot infringe.  
03:11 23 So since Microchip is not the actor, they don't  
03:12 24 infringe.

03:12 25 Q. And I believe you testified earlier the Forum

03:12 1 website is a platform for kind of third-party users to  
03:12 2 collaborate and communicate?

03:12 3 A. Right. It's a community site where people can  
03:12 4 get together and dig into Microchip Technology's  
03:12 5 software and related subject matter.

03:12 6 Q. Okay. And what is the second item that you  
03:12 7 have highlighted?

03:12 8 A. It's basically what I'd call the  
03:12 9 correspondence item. It speaks to the dynamic tracking  
03:12 10 of the Active Path part of the patents, where it says  
03:12 11 that as you select an item in one of the -- in either  
03:12 12 the top nav or in the cascading menus, a corresponding  
03:12 13 item must show up in the breadcrumb.

03:12 14 And, among other things, that means that the  
03:12 15 same number of items that you select should be the same  
03:12 16 number of items that show up in the breadcrumb.

03:12 17 Q. All right. Let's take a closer look at that.

03:13 18 MR. JENSEN: And, Mr. Thompson, could you  
03:13 19 pull up the Forum website, please?

03:13 20 But before you do, let me just pause  
03:13 21 here.

03:13 22 BY MR. JENSEN:

03:13 23 Q. And what aspect of the Forum website is it  
03:13 24 that Mr. Sherwood kind of maps to the Active Path and  
03:13 25 the correspondence requirement?

03:13 1 A. Well, it's shown in red, boxed in red there,  
03:13 2 right underneath the top nav. And the elements that  
03:13 3 are encircled in a red box are the ones that are  
03:13 4 supposed to be an Active Path.

03:13 5 Q. Okay. All right.

03:13 6 MR. JENSEN: Let's go to the Forums  
03:13 7 website, Mr. Thompson, please, at microchip.com/forums.  
03:13 8 BY MR. JENSEN:

03:13 9 Q. And it looks like across kind of the top  
03:13 10 there, right underneath the Microchip logo, are kind of  
03:14 11 three items. It says Forums, Posts, and Page Extras.

03:14 12 Do you see those?

03:14 13 A. Yes, sir. I do.

03:14 14 Q. Did Mr. Sherwood opine that the Posts or the  
03:14 15 Page Extra items had anything to do with his opinions  
03:14 16 in this case?

03:14 17 A. Not that I'm aware of.

03:14 18 Q. Did you investigate the Posts and the Page  
03:14 19 Extras items?

03:14 20 A. I did.

03:14 21 Q. Okay. And what conclusion did you reach as to  
03:14 22 those two items in terms of your infringement analyses?

03:14 23 A. I concluded that they didn't behave like, and  
03:14 24 in one case, resemble the requirements of the patents.

03:14 25 Why don't we go to Page Extras and I'll show

03:14 1 you what I mean. That's the one that doesn't resemble  
03:14 2 the requirements of the patent.

03:14 3 If you go to Page Extras, you get something  
03:14 4 that -- this is something called a "heat map," where  
03:14 5 the size of the text tells you how often the topic  
03:14 6 comes up.

03:15 7 And so, basically, what this shows is an  
03:15 8 analysis of the various threads in the Forums, so that  
03:15 9 you can see which ones are the most popular and you can  
03:15 10 click on them if you want to investigate further.

03:15 11 So it's kind of a -- there's that thing on  
03:15 12 Google where you say "random choice" or something like  
03:15 13 that, and this is something similar. Although, it is a  
03:15 14 little bit less random.

03:15 15 Q. So this really has nothing to do with the  
03:15 16 issues in this case?

03:15 17 A. No. It does not.

03:15 18 Q. Okay.

03:15 19 MR. JENSEN: Let's take a quick peek at  
03:15 20 Posts.

03:15 21 A. What we see in Posts are, in this case,  
03:15 22 latest -- there's different buttons at the top there,  
03:15 23 as you can see. The one that comes up by default is  
03:15 24 Latest Posts, and these are just the most recent items  
03:15 25 that have been added to the Forums. And you can click

03:15 1 on them and then visit them.

03:15 2 MR. JENSEN: Yeah. Mr. Thompson, why  
03:15 3 don't you go down and just --

03:15 4 A. Just click on the first one --

03:15 5 (Simultaneous speakers.)

03:15 6 MR. JENSEN: -- down below.

03:15 7 A. Yeah. There you go.

03:16 8 Now, notice what the breadcrumb looks like as  
03:16 9 a result of having picked two things. How many items  
03:16 10 do I count there? I count one, two, three, four, five.  
03:16 11 And we clicked two. So something's fishy here.

03:16 12 BY MR. JENSEN:

03:16 13 Q. Does that indicate that the Forum site has a  
03:16 14 required correspondence in the claim?

03:16 15 A. In this case it does not have the required  
03:16 16 correspondence.

03:16 17 Q. Okay. Now, let's take a look at the Forums  
03:16 18 item there. And let's go ahead and, Mr. Tittel, why  
03:16 19 don't you pick a navigation path?

03:16 20 A. Yeah.

03:16 21 THE WITNESS: Go ahead and go to Clock  
03:16 22 and Timing since we were looking at atomic clocks  
03:16 23 before. We might as well stay with time since it's on  
03:16 24 everybody's mind.

03:16 25 Go ahead and pick Clock Solutions. And

03:16 1 let's see what kind of posts we've got there.

03:16 2 A. All right. So we don't have that many, which  
03:16 3 is good because we don't have to look at a lot of  
03:16 4 stuff.

03:16 5 THE WITNESS: Now, pick the top one,  
03:16 6 Mr. Thompson, and let's look at the --

03:16 7 A. So, again, we've picked three things, and we  
03:17 8 see five in the breadcrumb.

03:17 9 BY MR. JENSEN:

03:17 10 Q. Now, let's do another example. And this time  
03:17 11 we won't make sort of the final selection there.

03:17 12 MR. JENSEN: So let's go to Forums.

03:17 13 BY MR. JENSEN:

03:17 14 Q. And why don't you pick another path,  
03:17 15 Mr. Tittel?

03:17 16 THE WITNESS: Let's do a 32-Bit  
03:17 17 Microcontroller, PIC32 Topics.

03:17 18 BY MR. JENSEN:

03:17 19 Q. So how many selections were made in that  
03:17 20 process right there with the drop-down menu?

03:17 21 A. Three.

03:17 22 Q. And what -- was it three or two?

03:17 23 A. No. I'm sorry. It's three.

03:17 24 Q. I think I got -- I might have miscounted.

03:17 25 Let's go back to the homepage. And then I should have



03:17 1 asked you to count in the first instance.

03:17 2 A. Yeah.

03:17 3 THE WITNESS: No, don't click that one.

03:17 4 And I'll show you why we don't want to click that one.

03:17 5 That's another thing we're going to talk about. Click

03:17 6 on the Microchip at the top of the slide.

03:17 7 BY MR. JENSEN:

03:17 8 Q. So we're at a clean homepage here; is that  
03:18 9 right?

03:18 10 A. Right.

03:18 11 THE WITNESS: So go to Forums. That's  
03:18 12 one -- we're mousing over that. And we're going to  
03:18 13 32-Bit Microcontrollers and then we're sliding over to  
03:18 14 General PIC32 Topics.

03:18 15 BY MR. JENSEN:

03:18 16 Q. And how many links are there in the resulting  
03:18 17 accused breadcrumb?

03:18 18 A. Four.

03:18 19 Q. And is that more, the same, or less than the  
03:18 20 number of selections that were made?

03:18 21 A. It's more.

03:18 22 Q. Okay. And what happens if we click on All  
03:18 23 Forums?

03:18 24 A. Yeah. I was just going to ask the same  
03:18 25 question.

03:18 1 THE WITNESS: Let's go ahead and click on  
03:18 2 All Forums, Mr. Thompson. It's the second item on the  
03:18 3 breadcrumb there on the top of the slide.

03:18 4 MR. JENSEN: At the top?

03:18 5 A. There we go. Thank you.

03:18 6 Notice that what we get here is we don't get a  
03:18 7 menu. We get a web page. And the web page has all of  
03:18 8 the Forums.

03:18 9 THE WITNESS: If you scroll down,  
03:18 10 Mr. Thompson.

03:19 11 A. I can show you that it has all of the Forums  
03:19 12 on the Microchip Forums website. It's not the way that  
03:19 13 clicking an active link is supposed to work. And when  
03:19 14 you click an active link, you're supposed to get a  
03:19 15 drop-down menu that lets you pick stuff.

03:19 16 This is giving you a huge honking list of  
03:19 17 stuff that you have to scroll -- scroll through for  
03:19 18 quite some while to see everything that's available.

03:19 19 BY MR. JENSEN:

03:19 20 Q. All right. Why don't we close out of that and  
03:19 21 come back to the slide presentation and see if we can  
03:19 22 just wrap up this segment.

03:19 23 And then I might request that we take a short  
03:19 24 break.

03:19 25 A. Thank you.

03:19 1 Q. All right. I think we can just tie this up,  
03:19 2 and it'll be a good clean break point.

03:19 3 And so in terms of the asserted claims here --  
03:19 4 and we've got Claim 1 of the '301 patent on the screen.  
03:19 5 What conclusion did you reach by your analysis of the  
03:19 6 Forum website?

03:20 7 A. I reached the conclusion that Microchip does  
03:20 8 not infringe the preamble, and that it's not -- that  
03:20 9 the number of links that -- the number of items that  
03:20 10 gets selected does not match the number of items that  
03:20 11 gets produced in the breadcrumb, so that we do not have  
03:20 12 one active link corresponding to each of the items  
03:20 13 selected.

03:20 14 Furthermore, I also pointed out that, as such,  
03:20 15 the All Forums element of the breadcrumb is not a  
03:20 16 cascading menu and therefore is also not an active link  
03:20 17 either.

03:20 18 Q. So I believe that concludes the section on  
03:20 19 your opinions as to noninfringement of the various  
03:20 20 Microchip websites; is that correct?

03:20 21 A. Yes, sir. It is.

03:20 22 Q. All right.

03:20 23 MR. JENSEN: Would it be all right if we  
03:20 24 took an afternoon break?

03:20 25 THE COURT: Sure.

03:20 1 MR. JENSEN: Thank you.

03:21 2 THE COURT: Ladies and gentlemen of the  
03:21 3 jury, if you would remember my instructions not to  
03:21 4 discuss the case amongst yourselves, we'll be in recess  
03:21 5 for about ten minutes.

03:21 6 THE BAILIFF: All rise.

03:21 7 (Jury exited the courtroom.)

03:21 8 THE COURT: Thank you. You may be  
03:21 9 seated.

03:21 10 Mr. Tittel, you may step down.

03:21 11 THE WITNESS: Thank you, sir.

03:21 12 THE COURT: Is there anything that we  
03:21 13 need to take up?

03:21 14 MR. DEVLIN: Not from the plaintiff.

03:21 15 THE COURT: Counsel?

03:21 16 MR. JENSEN: No, Your Honor.

03:21 17 THE COURT: Very good.

03:21 18 And I'm not going to hold you to this.  
03:21 19 How much -- about how much longer do you think you  
03:21 20 have?

03:21 21 MR. JENSEN: The good news is, I think  
03:21 22 we're through the bulk of it. We've got a few --

03:21 23 THE COURT: No. I don't care.

03:21 24 MR. JENSEN: Probably -- I mean, every  
03:21 25 time I estimate --

03:21 1 THE COURT: An hour?

03:21 2 MR. JENSEN: 45 minutes, roughly, would  
03:21 3 be my guess.

03:21 4 THE COURT: All I care about -- my plan  
03:21 5 would be, if we can, to finish him today.

03:21 6 About how long -- unless you tell me you  
03:22 7 have -- how much --

03:22 8 MR. JENSEN: And I'm happy to shorten  
03:22 9 that. I think --

03:22 10 THE COURT: No, no. You don't need to do  
03:22 11 that.

03:22 12 MR. DEVLIN: Yeah. I understand that --

03:22 13 THE COURT: About how long --

03:22 14 MR. DEVLIN: -- I think we can probably  
03:22 15 do that. Unless -- I don't want to speak while the  
03:22 16 witness is here. I believe we can probably do that.

03:22 17 THE COURT: I just -- I prefer to get  
03:22 18 witnesses done in one chunk --

03:22 19 MR. DEVLIN: Understood.

03:22 20 THE COURT: -- if we can.

03:22 21 MR. JENSEN: We'll keep that in mind.

03:22 22 THE COURT: Yeah. I don't think it's  
03:22 23 fair to the jury -- to him or the jury to be hanging  
03:22 24 overnight in the middle of --

03:22 25 Yes, sir.

03:22 1 MR. DEVLIN: May I ask on a timing issue?  
03:22 2 So, Your Honor, I'm looking at the clock. If we can go  
03:22 3 a little past 5:00 or --

03:22 4 THE COURT: Oh, no. We're going to go  
03:22 5 past 5:00.

03:22 6 MR. DEVLIN: Oh, great. Then we will  
03:22 7 be --

03:22 8 THE COURT: No, no, no. I'm -- that's  
03:22 9 what I'm saying is we are going to go until we finish  
03:22 10 with Mr. Tittel.

03:22 11 MR. DEVLIN: Understood. Got it. Then  
03:22 12 there's not going to be a -- first of all, there's not  
03:22 13 going to be a problem when you put it that way anyway,  
03:22 14 Your Honor.

03:22 15 THE COURT: We will go until we finish  
03:22 16 him.

03:22 17 Your next witness after him would be a  
03:22 18 damages expert?

03:22 19 MR. JENSEN: We might have a deposition  
03:22 20 clip to play. Let me check. We've got like a  
03:22 21 20-minute deposition video. But that's flexible.

03:23 22 THE COURT: And then damages expert?

03:23 23 MR. JENSEN: And then we have one more  
03:23 24 fact witness. It'll be relatively short.

03:23 25 THE COURT: So we'll finish with the

03:23 1 evidence tomorrow?

03:23 2 MR. JENSEN: Oh, absolutely.

03:23 3 THE COURT: Okay. Very good.

03:23 4 MR. DEVLIN: Thank you, Your Honor.

03:23 5 (Recess taken.)

03:42 6 THE BAILIFF: All rise.

03:42 7 THE COURT: Please remain standing.

03:43 8 (Jury entered the courtroom.)

03:43 9 THE COURT: Thank you. You may be

03:43 10 seated.

03:43 11 Counsel?

03:43 12 MR. JENSEN: Mr. Thompson, could we pull

03:43 13 the slide deck back up?

03:43 14 BY MR. JENSEN:

03:43 15 Q. And by way of preview, Mr. Tittel, we've  
03:43 16 covered your noninfringement opinions. I do have one  
03:43 17 or two more questions on that.

03:43 18 And then I just wanted to forecast for the  
03:43 19 jury that the last three sections will be nowhere near  
03:43 20 as long as the prior sections. Because I -- your  
03:43 21 expectations may be different having heard from  
03:43 22 Mr. Sherwood.

03:43 23 So to finish up on noninfringement,  
03:43 24 Mr. Tittel, some of the slides we looked at focused on  
03:43 25 the '301 patent, Claim 1, as an exemplary or

03:44 1 representative claim; is that correct?

03:44 2 A. Yes.

03:44 3 Q. Okay. I just want to kind of check the box  
03:44 4 and confirm that the elements and requirements we've  
03:44 5 been talking about, in fact, are in all of the asserted  
03:44 6 claims, and we did that for the Active Path, correct?

03:44 7 A. That is my opinion. Yes.

03:44 8 Q. Okay. So let's --

03:44 9 MR. JENSEN: Mr. Thompson, could you pull  
03:44 10 up the Demonstrative Slide 32 from Mr. Sherwood's  
03:44 11 presentation?

03:44 12 BY MR. JENSEN:

03:44 13 Q. And what is shown on this slide, Mr. Tittel?

03:44 14 A. We're trying to show all of the independent  
03:44 15 claims.

03:44 16 Q. Okay. And what aspect of the independent  
03:44 17 claims is represented on this slide?

03:44 18 A. The preamble, which includes the mention of  
03:44 19 the method.

03:44 20 Q. Okay. And just for the record, I'll note that  
03:44 21 this includes the preambles for Claim 1 of the '411  
03:45 22 patent, Claim 1 of the '301 patent, Claim 1 of the '517  
03:45 23 patent, Claim 1 of the '836 patent, Claim 8 -- or  
03:45 24 Claim 1 of the '880 patent, and Claim 14 of the '127  
03:45 25 patent.



03:45 1 And I believe there may be one more claim that  
03:45 2 perhaps couldn't be squeezed onto the slide.

03:45 3 MR. JENSEN: So I'll ask Mr. Thompson to  
03:45 4 just pull up the '836 patent.

03:45 5 A. Yes. We need to look at Claim 8.

03:45 6 MR. JENSEN: Yes. And we'll turn to  
03:45 7 Claim 8 of the '836 at the back. And maybe just zoom  
03:45 8 in there.

03:45 9 A. Indeed, it is a method claim.

03:45 10 BY MR. JENSEN:

03:45 11 Q. And what does that preamble read?

03:45 12 A. The preamble reads: A method for navigating  
03:45 13 websites, including a plurality of hierarchically  
03:45 14 organized web pages, said method comprising.

03:45 15 Q. Okay.

03:45 16 MR. JENSEN: We can take that exhibit  
03:45 17 down, Mr. Thompson, and go to Demonstrative Slide 63 of  
03:46 18 Mr. Sherwood's presentation.

03:46 19 BY MR. JENSEN:

03:46 20 Q. And what is the title of this slide,  
03:46 21 Mr. Tittel?

03:46 22 A. Asserted Patents Claim Comparison.

03:46 23 Q. And could you read -- since we started with  
03:46 24 the '301 patent, could you just read what's labeled as  
03:46 25 Claim 1.2 or Claim 1, Element 1.2 for the '301 patent?

03:46 1 A. Certainly.

03:46 2 Dynamically constructing an Active Path as a  
03:46 3 sequence of active links as items are selected using  
03:46 4 the graphical user menu system, with one said active  
03:46 5 link corresponding to each of the items selected, said  
03:46 6 active links providing direct access to one of a  
03:46 7 function, corresponding level and menu item without the  
03:46 8 need to navigate using said graphical user menu system.

03:47 9 Q. And this is the claim element that has the  
03:47 10 Active Path requirement and the correspondence  
03:47 11 requirement that you testified about?

03:47 12 A. Yes, sir.

03:47 13 Q. And do all of the independent claims that are  
03:47 14 asserted in this case have the same or a substantially  
03:47 15 similar requirement?

03:47 16 A. They do.

03:47 17 Q. And just for the record, I'll note which  
03:47 18 patents and claims are listed on this slide. It's  
03:47 19 Claim 1 of the '411 patent, Claim 1 of the '301 patent,  
03:47 20 Claim 1 of the '517 patent, Claim 8 of the '836 patent,  
03:47 21 Claim 1 of the '880 patent, and Claim 14 of the '127  
03:47 22 patent.

03:47 23 And I believe there is one claim from the '836  
03:47 24 patent, an independent claim that's being asserted  
03:47 25 which, again, for whatever reason, isn't shown on this

03:47 1 slide.

03:47 2 MR. JENSEN: So I'd ask Mr. Thompson to  
03:47 3 just pull up the '836 patent. And if we can go to  
03:48 4 Claim 1.

03:48 5 And let's go to the -- kind of the next  
03:48 6 element in the claim.

03:48 7 A. Yeah. Okay. He's --

03:48 8 And you can see at the top of the lower box  
03:48 9 that we have the corresponding requirement there.

03:48 10 BY MR. JENSEN:

03:48 11 Q. And it also requires an Active Path as well?

03:48 12 A. Yes, sir. That's correct.

03:48 13 Q. And it's got the correspondence limitation?

03:48 14 A. Yes, sir. That's correct.

03:48 15 MR. JENSEN: Thank you, Mr. Thompson.

03:48 16 You can pull that down.

03:48 17 BY MR. JENSEN:

03:48 18 Q. All right. Turning back to your slide  
03:48 19 presentation, Mr. Tittel, what is the second topic that  
03:48 20 we're going to address?

03:49 21 A. We're going to look at noninfringing  
03:49 22 alternatives for the old Microchip website.

03:49 23 Q. And can you remind the jury, what is a  
03:49 24 noninfringing alternative? Or what does a  
03:49 25 noninfringing alternative analysis entail?

03:49 1 A. Well, it's what you could have picked instead  
03:49 2 of concluding the hypothetical negotiation between  
03:49 3 Caddo and Microchip. So it is something that could  
03:49 4 have been substituted for the completion of that  
03:49 5 hypothetical negotiation.

03:49 6 Q. And when you conduct a noninfringing  
03:49 7 alternatives analysis, what assumptions or what  
03:49 8 required considerations must be made?

03:49 9 A. Well, the primary ones are that you have to  
03:49 10 assume that, indeed, the accused instrumentalities do  
03:50 11 infringe. And the second thing that you have to ensure  
03:50 12 is that the options that are presented as noninfringing  
03:50 13 alternatives are commercially acceptable.

03:50 14 And what "commercially acceptable" means is  
03:50 15 that they're not going to impose an undue burden on  
03:50 16 costs, performance, and other factors related to  
03:50 17 commercial acceptability.

03:50 18 Q. And at what point in time is the noninfringing  
03:50 19 alternative analysis assessed?

03:50 20 A. Well, the maximum damages period, as we heard  
03:50 21 from the Caddo damages expert, is six years. So that  
03:50 22 would take it back to 2014, based on the filing date of  
03:50 23 the lawsuit.

03:50 24 Q. And in your opinion, Mr. Tittel, from 2014 to  
03:50 25 the present, what noninfringing alternatives were

03:50 1 available to Microchip?

03:50 2 A. Well, I list a number of them on the next  
03:51 3 slide. And they include things like removing the  
03:51 4 drop-down menu from the breadcrumb, which is the  
03:51 5 redesigned website.

03:51 6 Removing breadcrumbs completely, as is the  
03:51 7 case on the graphics and chip-making company  
03:51 8 nvidia.com.

03:51 9 Replacing breadcrumbs with search-based  
03:51 10 function and filters as on Amazon.

03:51 11 Or using some other kind of forum website  
03:51 12 solution that does not use the breadcrumbs with  
03:51 13 drop-down menus such as Forumbee.

03:51 14 We could actually talk about all of those  
03:51 15 things, but we don't have to. Because as you'll see on  
03:51 16 the next slide, I'm going to raise the question of what  
03:51 17 noninfringing alternative is microchip.com already  
03:51 18 using?

03:51 19 And because the redesigned version of the  
03:51 20 microchip.com website is not accused of infringing, and  
03:51 21 they're using it already, they already have a  
03:52 22 noninfringing alternative.

03:52 23 And because they've already spent probably  
03:52 24 most of the money to implement this solution already,  
03:52 25 and because as you heard from Ms. Mahar, they achieved

03:52 1 the improvement in load times and user feedback that  
03:52 2 they were looking for, they've kind of already solved  
03:52 3 the problem as far as noninfringing alternatives go.

03:52 4 One of the points that one might take from  
03:52 5 this is that breadcrumbs with drop-downs are not  
03:52 6 necessary for website navigation, at least as far as  
03:52 7 Microchip is concerned. And indeed, Digital Range Labs  
03:52 8 advised Microchip to remove the drop-down menus in  
03:52 9 2019. And that's what Microchip did.

03:52 10 Q. In your opinion, Mr. Tittel, is the  
03:52 11 noninfringing alternative of a breadcrumb without a  
03:52 12 drop-down a commercially acceptable alternative, such  
03:53 13 as the redesigned website?

03:53 14 A. I think I've already said that in different  
03:53 15 terms, so I can only agree with you.

03:53 16 Q. And would -- you mentioned that there could be  
03:53 17 some cost associated with making changes to convert to  
03:53 18 a noninfringing alternative; is that correct?

03:53 19 A. Yes.

03:53 20 Q. What kind of scope or scale of effort or, you  
03:53 21 know, dollars and cents would be required to implement  
03:53 22 such a change?

03:53 23 And let me make sure I'm asking the question  
03:53 24 clearly. I don't want to know how -- how hard would it  
03:53 25 be to redesign your website from the ground up, as

03:53 1 Microchip did, but only to make the changes necessary  
03:53 2 to remove a drop-down menu from a breadcrumb path?

03:53 3 A. It would be a short and not terribly expensive  
03:53 4 project.

03:53 5 Q. And you mentioned an alternative sort of forum  
03:53 6 solution. Can you tell us a little bit about that?

03:53 7 A. Yes. I actually looked around at the  
03:54 8 marketplace. I didn't know about the Salesforce option  
03:54 9 until I heard Mrs. Mahar's testimony earlier this  
03:54 10 morning. But I did find a number of third-party forum  
03:54 11 websites that don't use breadcrumbs with drop-down  
03:54 12 menus.

03:54 13 And it looked like Forumbee got good reviews  
03:54 14 and provided the kind of scale that would be needed to  
03:54 15 support the Microchip user community. And it does  
03:54 16 indeed serve as a low-cost alternative to the ASP  
03:54 17 Playground version of the Forums.

03:54 18 Q. So would the Forumbee software basically be  
03:54 19 a -- like a software platform that a party could  
03:54 20 license or buy and then implement themselves?

03:55 21 A. They -- well, again, any time you buy a piece  
03:55 22 of software that delivers content to users, you're  
03:55 23 generally going to have to do some configuration work  
03:55 24 to set it up. You want to display your company logo,  
03:55 25 you want to choose the color scheme, you want to name

03:55 1 things so that they will make sense to people.

03:55 2 And in this case I think it would be what you  
03:55 3 call a "migration task." Because you would be  
03:55 4 migrating the way the Forums are set up in ASP  
03:55 5 Playground to a similar structure that you would have  
03:55 6 to define inside of the Forumbee environment.

03:55 7 Q. And so this isn't like a software solution  
03:55 8 that Microchip would have to develop in the first  
03:55 9 instance. They could buy it from somebody else,  
03:55 10 configure it or tweak it, and then it would be ready to  
03:55 11 go on their site?

03:55 12 A. Right. This is the kind of job that you could  
03:55 13 probably automate reasonably easily and achieve in  
03:56 14 weeks.

03:56 15 Q. And what is it about the Forumbee solution  
03:56 16 that makes it noninfringing?

03:56 17 A. It doesn't have a drop-down menu with  
03:56 18 breadcrumbs.

03:56 19 Q. Does it have a breadcrumb menu and it's just  
03:56 20 missing the drop-down? Is that...

03:56 21 A. I can't remember.

03:56 22 Q. Fair enough.

03:56 23 A. I can see now by looking at the web page that  
03:56 24 it does have a breadcrumb. So obviously it lacks a  
03:56 25 drop-down menu.



03:56 1 Q. It's been a long day. I understand.

03:56 2 A. Thank you for showing me that slide.

03:56 3 Q. And I believe we heard Mr. Sherwood testify  
03:56 4 yesterday that the Forumbee solution was available back  
03:56 5 in 2014.

03:56 6 Do you recall that?

03:56 7 A. I do.

03:56 8 Q. And so that would have been an available  
03:56 9 alternative at that point in time?

03:56 10 A. Yes.

03:56 11 Q. Are you aware of any companies that, in fact,  
03:57 12 use Forumbee as a -- for their -- to host their forum?

03:57 13 A. Well, there is an online education company  
03:57 14 that does use Forumbee for its curriculum and for its  
03:57 15 community. So there's an example of the -- I think  
03:57 16 it's Aviatrix, which means -- no insult intended --  
03:57 17 lady flyer in Latin. And they're using it for a pretty  
03:57 18 sizable curriculum delivery to support a pretty sizable  
03:57 19 online training effort.

03:57 20 Q. So Forumbee is a real product that actual  
03:57 21 people are using today and did use back in 2014?

03:57 22 A. To the best of my knowledge, yes.

03:57 23 Q. All right. I think that brings us to Topic 3,  
03:57 24 Comparable Licenses.

03:58 25 And just at a summary level, what were you

03:58 1 asked to do on this topic?

03:58 2 A. I was asked to look at the licenses that were  
03:58 3 under consideration both from the Caddo side and from  
03:58 4 the Microchip side, and to assess if they were  
03:58 5 technically comparable or not.

03:58 6 Q. And I think you used a word there I want to  
03:58 7 follow up on, which was "technically comparable"; is  
03:58 8 that right?

03:58 9 A. Yes. That's correct.

03:58 10 Q. So you're not offering an opinion on whether  
03:58 11 or not they're economically comparable; is that  
03:58 12 correct?

03:58 13 A. That's not my job as an expert. My job is to  
03:58 14 look at technical comparisons. Economics, as they do  
03:58 15 not in life, do not enter it into -- into it, in this  
03:58 16 case.

03:58 17 Q. And what are we looking at on this slide  
03:58 18 titled "Caddo's Comparable Licenses"?

03:58 19 A. These are licenses that Caddo has entered into  
03:58 20 with other parties, and we heard about most of these  
03:59 21 from the damages expert.

03:59 22 Q. And -- excuse me -- looks like there's several  
03:59 23 columns here. The leftmost column looks like the  
03:59 24 party, so the counterparty was Caddo. And then the  
03:59 25 other party is listed in the first column; is that

03:59 1 correct?

03:59 2 A. Yes. That is correct.

03:59 3 Q. And then there's a date column. And the third  
03:59 4 column is really where I want to focus, which is on the  
03:59 5 technology column?

03:59 6 A. That's right.

03:59 7 Q. Okay. And can you describe what's listed  
03:59 8 there?

03:59 9 A. Well, the reason why I selected Microsoft as  
03:59 10 not technically comparable is because in this case, the  
03:59 11 contested functionality had to do with, believe it or  
03:59 12 not, the File Explorer in Windows. And that's not a  
03:59 13 website technology. That's an operating system  
03:59 14 technology.

03:59 15 And so even though there are lots of  
03:59 16 similarities in behavior, it's not a comparable  
04:00 17 technology because it doesn't involve a website.

04:00 18 Q. And maybe just taking one step back to  
04:00 19 something that perhaps is obvious but perhaps not.

04:00 20 Did all of the Caddo licenses listed here,  
04:00 21 with [REDACTED]

04:00 22 [REDACTED] involve the Active  
04:00 23 Path patents?

04:00 24 A. Yes. The '411 patent family of patents was  
04:00 25 the subject of these agreements.

04:00 1 Q. And so they would be comparable in that  
04:00 2 respect, from the perspective of being the same  
04:00 3 patents?

04:00 4 A. Right. The same patents. Right.

04:00 5 Q. Understood.

04:00 6 Did you evaluate any Microchip licenses,  
04:00 7 patent licenses?

04:00 8 A. I did. I looked at the license portfolio that  
04:00 9 Microchip licensed from a company called [REDACTED]

04:00 10 [REDACTED]

04:01 11 [REDACTED]

04:01 12 [REDACTED]

04:01 13 [REDACTED]

04:01 14 [REDACTED]

04:01 15 [REDACTED]

04:01 16 And if we can go to the next slide, I'll show  
04:01 17 you a picture there of MSN Home, where the MSN Money  
04:01 18 site is, and it basically shows a picture of a -- this  
04:01 19 is a -- not a horizontal graphical user menu that's  
04:01 20 shown at the upper left, it's a vertical or left nav  
04:01 21 menu.

04:01 22 But, indeed, if you hover over an entry in  
04:01 23 that menu, you get another drop-down menu that comes  
04:02 24 out of it. And, in fact, in this case the Stock  
04:02 25 Research item in the first-level menu has been selected

04:02 1 and we see the different services -- information  
04:02 2 services that do stock research that are available --  
04:02 3 that were available through the site at the time of the  
04:02 4 illustration being made.

04:02 5 Q. And what were some of the similarities that  
04:02 6 you identified in terms of the [REDACTED] license and the  
04:02 7 technology as it relates to the asserted patents and  
04:02 8 technology at issue in this case?

04:02 9 A. Well, in the [REDACTED], they were directed  
04:02 10 to, as Mr. Sherman (sic) observed, discussion site or  
04:02 11 bulletin board techniques, but they also covered  
04:02 12 website navigation techniques as well.

04:03 13 They both share a common concern with making  
04:03 14 efficient use of screen real estate. They both discuss  
04:03 15 an interest in providing more intuitive user interface  
04:03 16 options. And they both talk about technology that  
04:03 17 helps to make websites more visually appealing.

04:03 18 So I found the technologies to be comparable  
04:03 19 for those reasons.

04:03 20 Q. And I believe that brings us to the fourth  
04:03 21 topic here of Patent Benefits.

04:03 22 A. It does.

04:03 23 Q. And what are you referring to here when you  
04:03 24 say "patent benefits"?

04:03 25 And there's sort of a question posed: Agree

04:03 1 with alleged benefits of patents?

04:03 2 A. Mr. Sherwood, in his testimony, talked about  
04:03 3 the benefits of the '411 family of patents, and I'm  
04:03 4 responding to his statements of those benefits.

04:04 5 Q. By and large, did you agree with how he  
04:04 6 characterized the benefits of the asserted patents?

04:04 7 A. I think his statements put too much emphasis  
04:04 8 on the Active Path, and I think they overvalue the  
04:04 9 importance of navigation as a part of overall website  
04:04 10 design.

04:04 11 Q. Could you elaborate on that a little bit?

04:04 12 A. Sure. Since we've already moved to the next  
04:04 13 slide, I can do that.

04:04 14 If -- let me say that when it comes to user  
04:04 15 retention and engagement, as I was researching the  
04:04 16 topic, I found an article that described 16 different  
04:04 17 ways to improve user engagement on a website. And  
04:04 18 in -- of those 16 ways, only one of them mentioned user  
04:05 19 website navigation.

04:05 20 And this is kind of characteristic of  
04:05 21 the importance that Mr. Sherwood ascribes to navigation  
04:05 22 as he's talking about overall website design. He tends  
04:05 23 to see it as a primary driver and a primary motivator  
04:05 24 of what makes a good web design.

04:05 25 And when he was talking about the difference

04:05 1 between, for example, a good web design and a poor web  
04:05 2 design being 100 percent, I couldn't help but get the  
04:05 3 feeling that he was also communicating that a lot of  
04:05 4 that 100 percent difference comes from the kind of  
04:05 5 technologies that the Active Path patents deliver to  
04:05 6 those who use them.

04:05 7 And I would simply like to observe that as  
04:05 8 someone who has studied and worked with website design  
04:05 9 for the past two and a half decades or more, that I do  
04:05 10 agree that navigation is a component of website design,  
04:06 11 but I do also observe that it's not the only component  
04:06 12 of website design, and that its importance has to be  
04:06 13 considered along with many other aspects of website  
04:06 14 design.

04:06 15 And we heard Ms. Mahar talk about the things  
04:06 16 that were driving the redesign of their website. And  
04:06 17 what they were concerned about was stability, usability  
04:06 18 of the content system, ease of use for maintaining  
04:06 19 websites, and, probably most important of all to them,  
04:06 20 was the change in load time from 12 seconds to 3  
04:06 21 seconds, which, as somebody who's been tracking stuff  
04:06 22 on the web for many years, I can tell you is a pretty  
04:06 23 big deal. That's a 75 percent improvement or better in  
04:06 24 page load time, and that is really, really significant.

04:07 25 And that slide that they showed from the

04:07 1 presentation that said what the value of improving page  
04:07 2 load time was was significant, and I submit that, at  
04:07 3 best, a very small portion of the improvement in load  
04:07 4 time is going to come from navigation.

04:07 5 I must also observe that Microchip's site has  
04:07 6 improved in performance and, according to Ms. Mahar,  
04:07 7 improved in revenue generation since the accused  
04:07 8 functionalities, which I've already shown really don't  
04:07 9 match the Active Path, were taken out of the  
04:07 10 microchip.com website by dropping the pull-down menus.

04:07 11 Q. Mr. Tittel, I asked you a question, I think,  
04:08 12 at the start of your testimony about, you know, when  
04:08 13 was Google started. And it was, I think, shortly after  
04:08 14 or around the time that you were publishing your first  
04:08 15 book.

04:08 16 Do you recall that?

04:08 17 A. Yes. My first book was '95 and Google was  
04:08 18 '98.

04:08 19 Q. In 1998, how big or how popular was Google?

04:08 20 A. It attracted notice pretty much immediately,  
04:08 21 but it was -- when it first started out, it was not --  
04:08 22 it did not immediately break ahead of older established  
04:08 23 search sites at the time, such as Yahoo, Expedia -- I'm  
04:08 24 trying to think who else -- Alta Vista.

04:08 25 There were a number of other early search



04:08 1 sites that had something of a presence in that space,  
04:08 2 but I think it took three or perhaps four years for  
04:08 3 Google to kind of eclipse everybody else.

04:09 4 Q. And you're familiar with the Google website?

04:09 5 A. Yes.

04:09 6 Q. How frequently do you use it?

04:09 7 A. At least dozens of times a day, if not more  
04:09 8 than that.

04:09 9 Q. And how has the -- I'll call it the advent of  
04:09 10 search-based navigation on sites such as Google and  
04:09 11 search engines, how has that changed over the last  
04:09 12 20 years in the context of website navigation using,  
04:09 13 you know, drop-down menus?

04:09 14 A. Well, I think when the web got going, the way  
04:09 15 that people interacted with information was to look at  
04:09 16 the front page of the website, see what was there and  
04:09 17 start poking around.

04:09 18 I think that, collectively, we've gotten past  
04:09 19 the poking around stage. And you'll notice that many  
04:09 20 of Dr. Sherwood's arguments concerning the value of the  
04:10 21 '411 family of patents sort of stressed the ability to  
04:10 22 see more of what was going on around you and to be able  
04:10 23 to more easily understand the structure of the website  
04:10 24 and to explore things and find things by looking for  
04:10 25 them.

04:10 1 The point of search is to cut the exploration  
04:10 2 out and, assuming that you know what you're looking  
04:10 3 for, to be able to cut to the chase and get right to  
04:10 4 where you're going.

04:10 5 That's not to say that navigation isn't  
04:10 6 necessary or that it has no value. But I will observe,  
04:10 7 for example, that 60 percent of the traffic on  
04:10 8 microchip.com comes from something called an "external  
04:10 9 referrer."

04:10 10 What the heck does that mean?

04:10 11 It means that another website had a link in it  
04:10 12 from which the visitor came to get to microchip.com.  
04:11 13 And in most cases, when a visit comes from an external  
04:11 14 referrer, it's probably from a search engine. If not  
04:11 15 Google, then some other search engine.

04:11 16 MR. JENSEN: I pass the witness.

04:11 17 CROSS-EXAMINATION

04:11 18 BY MR. DEVLIN:

04:12 19 Q. Good afternoon, Mr. Tittel.

04:12 20 A. Good afternoon, Mr. Devlin.

04:12 21 Q. Thank you for being here with us today.

04:12 22 You've worked as an expert in maybe 12 or 15  
04:12 23 different patent cases; is that right?

04:12 24 A. I'm sorry. Would you repeat the question?

04:12 25 Q. Sure. I understand you've worked as an expert

04:12 1 in patent cases maybe a dozen times, 15 times,  
04:12 2 something like that; is that right?

04:12 3 A. I've worked on 60 patent cases. I've been  
04:12 4 deposed in perhaps 15 of them, and I've appeared at  
04:12 5 trial three times. This is actually four times now.

04:12 6 Q. I see. Thank you.

04:12 7 So the -- as I understand it, at least as of  
04:12 8 the time of your deposition, in the 12 to 15 cases that  
04:12 9 you'd been deposed in or so, all of those were where  
04:12 10 you were acting as an expert for the defendant, not the  
04:12 11 patent owner; is that right?

04:12 12 A. Yes. That's correct.

04:12 13 Q. And in this case, you're being paid \$425 an  
04:13 14 hour for your time; is that right?

04:13 15 A. I have not charged \$425 an hour for my time.  
04:13 16 I only started doing that perhaps in, oh, maybe last  
04:13 17 September or October. Before that, my rate was 400 for  
04:13 18 about four years before that, and then prior to that it  
04:13 19 was \$250 an hour.

04:13 20 Q. Okay. So during the pendency of this case, it  
04:13 21 was in the 400/425 range?

04:13 22 A. It was 425 for this case.

04:13 23 Q. That's what I meant.

04:13 24 A. Perhaps I didn't understand your question  
04:13 25 correctly. I apologize.

04:13 1 Q. No problem, sir. Thank you.

04:13 2 I think to make things simpler, we're going to  
04:13 3 kind of walk through some of your slides as we go, so  
04:13 4 we can connect the dots between what I'm asking you  
04:13 5 about and what you said on your direct testimony.

04:13 6 How's that sound?

04:13 7 A. Let's do it.

04:13 8 (Simultaneous speakers.)

04:13 9 A. I would ask you to approach the microphone  
04:13 10 more closely because I'm having trouble hearing you.

04:13 11 BY MR. DEVLIN:

04:13 12 Q. Okay. I'll do that. Let's see if we can --  
04:14 13 how's that? A little better?

04:14 14 A. It is. Yes. Thank you.

04:14 15 Q. I can just talk louder, if we want. How's  
04:14 16 that?

04:14 17 A. Either way. It's up to you.

04:14 18 Q. Okay. Maybe I'll do it that way. It's more  
04:14 19 natural.

04:14 20 Without going into the presentation yet, part  
04:14 21 of the presentation was about the background of the  
04:14 22 technology.

04:14 23 You remember that?

04:14 24 A. Yes.

04:14 25 Q. Okay. And when you were talking about the

04:14 1 background, you looked at the drop-down menus, you  
04:14 2 looked at the breadcrumbs and so forth, right?

04:14 3 A. Yes, sir.

04:14 4 Q. And I guess the implication is the invention  
04:14 5 is -- somehow this combination of these two elements,  
04:14 6 that they're in the prior art. Is that the  
04:14 7 implication?

04:14 8 A. I see them as the key components.

04:14 9 Q. Okay. Now, you were here during openings --  
04:14 10 opening statements?

04:14 11 A. I was.

04:14 12 Q. And you heard that the defenses we were going  
04:14 13 to hear were infringement, invalidity, and damages,  
04:14 14 right?

04:14 15 A. That is correct. Yes.

04:15 16 Q. You're the only technical expert we're going  
04:15 17 to hear from Microchip, correct?

04:15 18 A. That is correct. Yes.

04:15 19 Q. All right. And so -- and you offered zero  
04:15 20 testimony today on the issue of the validity of the  
04:15 21 patents; is that right?

04:15 22 A. That is correct. Yes.

04:15 23 Q. Okay. Thank you.

04:15 24 And while I'm talking about it, there was a --  
04:15 25 there was a slide?

04:15 1 MR. DEVLIN: And maybe we can go to that.

04:15 2 It was Slide 22. Do you have that, Mr. Gooden?

04:15 3 There we go.

04:15 4 BY MR. DEVLIN:

04:15 5 Q. Do you remember this one?

04:15 6 A. I do.

04:15 7 Q. And we were explaining to everybody that  
04:15 8 there's these two groups of patents. There's the  
04:15 9 original and then the so-called CIPs, the  
04:15 10 continuations-in-part.

04:15 11 Does that ring a bell?

04:15 12 A. It does.

04:15 13 Q. That issue is only relevant to the issue of  
04:16 14 validity, right? In terms of priority dates and things  
04:16 15 like that, correct?

04:16 16 A. Yes. That's correct.

04:16 17 Q. Okay. So we don't need to worry about this  
04:16 18 issue anymore of the two different groups and so forth,  
04:16 19 fair?

04:16 20 A. Indeed. I thought the jury might be  
04:16 21 interested in seeing how the patents were related to  
04:16 22 each other.

04:16 23 Q. Fair enough. I'm just -- I just want to make  
04:16 24 it clear -- and I'm not criticizing you, sir. I just  
04:16 25 want to make it clear for everybody that it's actually

04:16 1 not relevant to any of the issues that are actually  
04:16 2 being decided here. So they don't have to worry about  
04:16 3 it anymore. Is that okay?

04:16 4 A. It's not only okay, but I did not testify any  
04:16 5 further on that subject. So there's really nothing to  
04:16 6 deal with.

04:16 7 Q. Perfect. We're in agreement. Thank you.  
04:16 8 Before we go any further --

04:16 9 MR. DEVLIN: And you can pull that down,  
04:16 10 Mr. Gooden.

04:16 11 BY MR. DEVLIN:

04:16 12 Q. I want to talk about one of the principles  
04:16 13 that's pretty important. First of all, with patent  
04:16 14 claims, every word matters, right?

04:16 15 A. Yes, sir.

04:16 16 Q. Yeah. Every word in those patent claims is  
04:16 17 important, because that defines what each claim  
04:16 18 requires to show infringement, correct?

04:17 19 A. Yes.

04:17 20 Q. Okay. And then in the same way the Court's  
04:17 21 claim construction is important because it really --  
04:17 22 when the Court defines one of the terms in the claims,  
04:17 23 then that's what you have to show is present to show  
04:17 24 infringement. You have to show that definition is  
04:17 25 there, right?

04:17 1 A. Indeed.

04:17 2 Q. Okay. Great.

04:17 3 Now, let me talk a little bit more about the  
04:17 4 patent claims. There's somewhere -- and maybe we can  
04:17 5 pull up -- let's pull up an example of your patent  
04:17 6 claims.

04:17 7 MR. DEVLIN: Let's go to the '301,  
04:17 8 Claim 1, which was Slide 27, I believe, Mr. Gooden.  
04:17 9 BY MR. DEVLIN:

04:17 10 Q. Now, I want to just point everyone to  
04:17 11 something. So if you look in the yellow text in the  
04:17 12 preamble, you see that at the top?

04:17 13 A. I do.

04:17 14 Q. Okay. And right at the bottom of that text,  
04:17 15 the fifth line down, it says: Said method comprising  
04:18 16 the steps of.

04:18 17 Do you see that?

04:18 18 A. I do.

04:18 19 Q. Okay. Do you see that word "comprising"?

04:18 20 A. Yes.

04:18 21 Q. That's an important word, isn't it?

04:18 22 A. It is.

04:18 23 Q. And it's important because when a patent claim  
04:18 24 uses that transition word, the word "comprising," what  
04:18 25 it means is in order to show infringement, you have to



04:18 1 demonstrate the presence of all the elements. But at  
04:18 2 the same time, if there are additional things going on  
04:18 3 in the accused product or method, they're not relevant.  
04:18 4 They don't negate infringement as long as all the claim  
04:18 5 elements that are listed are there, right?

04:18 6 A. Yes, sir. That's correct.

04:18 7 Q. Thank you.

04:18 8 Now, you can write a patent claim so that  
04:19 9 that's not true. You can write a patent claim so that  
04:19 10 in order to infringe, you have everything in the claim  
04:19 11 and nothing else. So if there is something else  
04:19 12 besides what's in the claim, that would negate  
04:19 13 infringement, even if the claimed elements are there.

04:19 14 You know that, right?

04:19 15 A. I would ask you to repeat it once again to  
04:19 16 make sure that I parsed it correctly.

04:19 17 Q. Sure. You know what? Let's work through an  
04:19 18 example. How's that?

04:19 19 Imagine there's a patent claim and it says a  
04:19 20 horizontal surface made of wood and four vertical legs  
04:19 21 holding that surface away from the ground.

04:19 22 Are you with me so far?

04:19 23 A. Yes, sir.

04:19 24 Q. Okay. That's a table, right?

04:19 25 A. Could be.

04:19 1 Q. Fair enough. All right.

04:19 2 If the claim says that it's comprising those  
04:19 3 things and I have a table with four legs and a fifth  
04:20 4 leg in the middle, that meets that claim, right?

04:20 5 It's got the flat surface, it's got the four  
04:20 6 legs. The fifth leg doesn't matter, right?

04:20 7 A. Correct.

04:20 8 Q. Great. If, on the other hand, the  
04:20 9 transitional word in that claim was "consisting of,"  
04:20 10 then -- and it said a flat surface and four legs, then  
04:20 11 a table that had a flat surface and four legs and a  
04:20 12 fifth leg in the middle would not infringe, right?

04:20 13 A. Because it had an extra leg. Yes.

04:20 14 Q. Right. It's got an extra thing in there  
04:20 15 that's not actually recited in the body of the claim.

04:20 16 With me?

04:20 17 A. Yes, sir.

04:20 18 Q. Okay. But all of these claims are comprising  
04:20 19 claims, and so extra stuff doesn't negate infringement  
04:20 20 as long as the elements are met, right?

04:20 21 A. Yes, sir.

04:20 22 Q. Thank you. All right. Let's keep that in  
04:20 23 mind as we work forward through this.

04:21 24 Let's look at this '301 patent, Claim 1. I  
04:21 25 want to talk about it.

04:21 1 You talked here about this Active Path. See  
04:21 2 that? Right in the middle. It's in the orange, kind  
04:21 3 of at the top?

04:21 4 A. You mean Item No. 2 in sort of burnt orange?

04:21 5 Q. That's actually a good question. I was  
04:21 6 looking at it in the claim. But we're looking at it on  
04:21 7 the left as well.

04:21 8 And I think, to hold right here, you were  
04:21 9 talking through this. And you were talking about 1 and  
04:21 10 2. And I wrote down what you said. Actually, I  
04:21 11 photographed it from the screen we have. And then we  
04:21 12 copied it down here.

04:21 13 See if this rings a bell. You said: The  
04:21 14 second claim element, which is labeled 2 here on the  
04:21 15 slide, talks about dynamically constructing an Active  
04:21 16 Path.

04:21 17 And remember, that's something that the Court  
04:22 18 gave us a definition for, which is: A sequence of  
04:22 19 active links as items are selected where there's a  
04:22 20 one-to-one correspondence between the item that are  
04:22 21 selected and the items that show up in the path, the  
04:22 22 Active Path for the resulting breadcrumb.

04:22 23 Now, does that sound right?

04:22 24 A. Well, actually I think you missed a comma in  
04:22 25 that sentence.

04:22 1 Q. All right.

04:22 2 A. Because I would have put a comma after the  
04:22 3 sequence of active links and then continued on with the  
04:22 4 rest of the sentence as a continuation of my statement  
04:22 5 rather than construing the entire statement as a  
04:22 6 redefinition of the Court's construction, which I would  
04:22 7 never, ever presume to do.

04:22 8 Q. Great.

04:22 9 So what we're seeing here on this slide as  
04:22 10 Item No. 2 is something more specific than the Court's  
04:22 11 construction, right?

04:22 12 A. That language is not an attempt to restate the  
04:23 13 Court's construction. It's just supposed to summarize  
04:23 14 the focus and thrust of the element.

04:23 15 Q. Thanks. Maybe my question wasn't clear. Let  
04:23 16 me ask it again.

04:23 17 This summary here, No. 2, it includes language  
04:23 18 that is not in the Court's construction, right? Of  
04:23 19 Active Path?

04:23 20 A. It is a description of an entire block of text  
04:23 21 that includes the words "Active Path" as well as one,  
04:23 22 two, three, four, five, six, seven, eight lines of  
04:23 23 text.

04:23 24 Q. All right. Great.

04:23 25 Let me go back to it this way.

04:23 1 MR. DEVLIN: Let's go to Slide 26. I  
04:23 2 think it's back one.

04:23 3 BY MR. DEVLIN:

04:24 4 Q. This is the Court's construction of Active  
04:24 5 Path, right?

04:24 6 A. Yes.

04:24 7 Q. Okay. It says: A sequence of links  
04:24 8 dynamically created as a menu system is navigated.

04:24 9 Did I read that right?

04:24 10 A. You did.

04:24 11 Q. Okay. So the Court's construction of Active  
04:24 12 Path itself, those words alone, "Active Path," do not  
04:24 13 require anything about one-to-one correspondence. It's  
04:24 14 other words in that claim we were looking at that  
04:24 15 require that one-to-one correspondence, right?

04:24 16 A. Yes. That's true. And that is what I was  
04:24 17 trying to communicate.

04:24 18 Q. Thank you so much for clarifying that, sir.  
04:24 19 Okay.

04:24 20 Now, let me talk about a related issue here  
04:24 21 which is you used this --

04:24 22 MR. DEVLIN: Could we go back to 27, the  
04:24 23 '301 patent, Claim 1. Slide 27.

04:24 24 Thank you.

04:24 25 BY MR. DEVLIN:

04:24 1 Q. You looked at this '301 patent, Claim 1, as  
04:25 2 representative in a way; is that fair?

04:25 3 A. Yes. It is.

04:25 4 Q. Okay. Great.

04:25 5 That's what Mr. Sherwood did. That's what you  
04:25 6 said, right?

04:25 7 A. That's correct.

04:25 8 Q. Okay. But if I recall right, I think the  
04:25 9 analysis with Mr. Sherwood was pretty precise. And I  
04:25 10 think what I said, and that he agreed to, went  
04:25 11 something like this when we had those claim elements  
04:25 12 all lined up. That the other elements in those lists  
04:25 13 were substantively identical or subsumed within the  
04:25 14 claim element that Mr. Sherwood and I had just gone  
04:25 15 through.

04:25 16 Remember those words "subsumed within"?

04:25 17 A. I do. Yes.

04:25 18 Q. And at one point we clarified what that meant.  
04:25 19 That meant that the claim element for which we had just  
04:25 20 gone through the evidence was at least as detailed, it  
04:25 21 might include more detail than one of the claims below,  
04:25 22 right?

04:25 23 A. Yes. It's like the mathematical relationship  
04:26 24 of a set where all the elements of a set are enclosed  
04:26 25 in the elements of a larger set.

04:26 1 Q. Got you.

04:26 2 And I'm not going to go in that particular  
04:26 3 direction, but I know what you're talking about. And  
04:26 4 so let me try to say it a little differently. Okay?

04:26 5 Let's imagine that instead of all these words,  
04:26 6 we had a -- two claims that look like this. One was a  
04:26 7 bag and the bag holds an apple, paper towels, and a  
04:26 8 light bulb. Okay?

04:26 9 And Mr. Sherwood goes along and he says, aha.  
04:26 10 I prove an apple, I prove paper towels, and I prove a  
04:26 11 light bulb.

04:26 12 Are you with me?

04:26 13 And then Mr. Sherwood goes, now, there's  
04:26 14 another patent claim and that has an element that just  
04:26 15 says apple. And so I know if I've proven an apple and  
04:26 16 I've also proven a paper towel and I've also proven up  
04:26 17 a light bulb, then I've proven the apple. So I can  
04:26 18 check that one off too.

04:26 19 Sound right?

04:26 20 A. Yes. That's correct.

04:26 21 Q. Okay. But the opposite does not work, right?

04:27 22 A. If you have to have three things and you only  
04:27 23 have one, you don't have three things.

04:27 24 Q. Okay. And what's funny -- and I'm not going  
04:27 25 to try to prove this to you, other than in a second

04:27 1 with the same example, but noninfringement is sort of  
04:27 2 the opposite, what you're talking about. Let me tell  
04:27 3 you what I mean. Here's an example.

04:27 4 Mr. Sherwood proves apple, paper towel, and  
04:27 5 light bulb. And there's another claim out there that  
04:27 6 just says apple.

04:27 7 You come on the stand and you say, there's no  
04:27 8 paper towel. And you put a lot of evidence in. And  
04:27 9 now we've joined that issue.

04:27 10 And if the jury believes you and there's no  
04:27 11 paper towel there, that first claim is not infringed  
04:27 12 because it was required in that claim, right?

04:27 13 A. I'm not sure I understand your hypothetical.

04:27 14 Q. Well, let's drill down on it. Okay?

04:28 15 Imagine a patent claim like we've been talking  
04:28 16 about. It requires an apple, it requires a paper  
04:28 17 towel, and it requires a light bulb.

04:28 18 And Mr. Sherwood has rendered an opinion and  
04:28 19 shown evidence that there is an apple, there's a paper  
04:28 20 towel, and there is a light bulb.

04:28 21 Are you with me so far?

04:28 22 A. Yes.

04:28 23 Q. Okay. Great.

04:28 24 And now you get on the stand and say, aha.  
04:28 25 Sherwood's got a problem. That thing about paper



04:28 1 towel, I totally disagree. Let me show y'all a bunch  
04:28 2 of evidence. And you do that.

04:28 3 With me so far?

04:28 4 A. Okay.

04:28 5 Q. All right. At that point, the jury has a  
04:28 6 decision to make about that claim: Is Sherwood right  
04:28 7 about the paper towel business or is Tittel right about  
04:28 8 the paper towel business?

04:28 9 Are you with me so far?

04:28 10 MR. JENSEN: Objection, Your Honor.  
04:28 11 Relevance. This sounds like a closing argument. If he  
04:28 12 wants to ask him something about the products or his  
04:28 13 infringement opinions, he's welcome to. But this --

04:28 14 MR. DEVLIN: This is absolutely his  
04:28 15 infringement opinion. And this is going to be done in  
04:28 16 one minute and it is absolutely --

04:28 17 THE COURT: Overruled.

04:28 18 MR. DEVLIN: Thank you.

04:28 19 BY MR. DEVLIN:

04:29 20 Q. You with me so far?

04:29 21 The jury now has a decision to make: Is the  
04:29 22 paper towel there or if it's not?

04:29 23 And if it's not, there's no infringement of  
04:29 24 that claim; if it is, there's infringement of that  
04:29 25 claim.

04:29 1 Are you with me so far?

04:29 2 A. I understand what you're saying. Yes.

04:29 3 Q. Great.

04:29 4 But let's assume the jury believes you, and  
04:29 5 there's no paper towel. What about that claim that  
04:29 6 only required an apple?

04:29 7 You haven't given any evidence at all that the  
04:29 8 apple is missing.

04:29 9 Are you understanding me now still?

04:29 10 A. I understand what you're saying. Yes.

04:29 11 Q. Great.

04:29 12 Let's see this one-to-one correspondence  
04:29 13 issue.

04:29 14 MR. DEVLIN: Can we pull up the '880  
04:29 15 patent, Claim 1? I think it's Joint 4, maybe it's 5.

04:30 16 Last page, I believe. Next to last.

04:30 17 All right. It's right there, Claim 1,  
04:30 18 left-hand column, two thirds of the way down.

04:30 19 Thanks. Let's pull that up.

04:30 20 BY MR. DEVLIN:

04:30 21 Q. Okay. So this claim has a method. See there  
04:30 22 at the top?

04:30 23 A. I do.

04:30 24 Q. What's our transition word, just out of  
04:30 25 curiosity?

04:30 1 A. If by "transition word" you mean the last word  
04:30 2 before the next claim element begins, it would be  
04:30 3 "comprising."

04:30 4 Q. Great. Yep. That's it. We got a comprising  
04:30 5 claim.

04:30 6 And you know what, I want to put a pin in  
04:30 7 something you just said, and I want to come back to it.  
04:30 8 You said: The last word before the next claim element.

04:30 9 Do you remember that coming out of your mouth?

04:30 10 A. Well, Mr. Sherwood presented evidence for all  
04:31 11 of the preambles.

04:31 12 Q. Uh-huh.

04:31 13 A. And the presumption when you present evidence  
04:31 14 for a preamble is that it's limiting. But the -- as I  
04:31 15 understand it, the preamble of a patent need not be  
04:31 16 limiting so that you could count it either as the first  
04:31 17 claim element or as something that precedes the first  
04:31 18 claim element.

04:31 19 I wasn't trying to say that I had construed  
04:31 20 the preamble to be limiting or that this was  
04:31 21 necessarily the second claim element.

04:31 22 And if you'll recall --

04:31 23 Q. Hold on. Hold on. I'm sorry. Because I  
04:31 24 need -- that's not really an answer to my question. I  
04:31 25 promise you, we're going to get there. That's why I

04:31 1 was putting a pin in it.

04:31 2 A. Okay.

04:31 3 Q. All right. We're going to get back there.

04:31 4 Okay. Thank you.

04:31 5 So here, see the Active Path element? It's  
04:32 6 the second one down, "providing" and then "dynamically  
04:32 7 constructing."

04:32 8 Do you see that?

04:32 9 A. I do.

04:32 10 Q. Says: Dynamically constructing an Active Path  
04:32 11 as a sequence of active links after an item of the  
04:32 12 information structure has been selected, right?

04:32 13 A. Yes.

04:32 14 Q. Okay. So there's nothing there about  
04:32 15 one-to-one correspondence, right?

04:32 16 Just nothing there about one-to-one  
04:32 17 correspondence, right?

04:32 18 A. I see no language in that claim element that  
04:32 19 specifically mentions one-to-one correspondence.

04:32 20 Q. All right. Thank you.

04:32 21 A. However --

04:32 22 Q. Go ahead.

04:32 23 A. -- if you construct an Active Path according  
04:32 24 to the Court's construction, then you will be in a  
04:32 25 situation where each time you make a selection,

04:32 1 there'll be an element added to the Active Path and,  
04:33 2 perforce, I believe that implies a one-to-one  
04:33 3 correspondence.

04:33 4 Q. Well, then -- well, okay.

04:33 5 Let's go back to the '301 patent.

04:33 6 MR. DEVLIN: Mr. Gooden, I'm not sure --  
04:33 7 we may come back to this. You might capture that.  
04:33 8 That -- we can go back to the slide deck to the '301  
04:33 9 patent.

04:33 10 Thank you, Mr. Gooden.

04:33 11 BY MR. DEVLIN:

04:33 12 Q. So if you're right, then this language about  
04:33 13 there being a one-to-one correspondence in the '301  
04:33 14 patent claim, that's sort of redundant, right?  
04:34 15 Wouldn't even need to be there?

04:34 16 A. I didn't hear a question in there.

04:34 17 Q. Your interpretation of Active Path, which  
04:34 18 itself, those words alone, would require one-to-one  
04:34 19 correspondence, would make the actual recitation of  
04:34 20 that requirement in the '301 claim element redundant,  
04:34 21 totally unnecessary. Those words would have no  
04:34 22 meaning, because it would already be built into the  
04:34 23 construction.

04:35 24 That would be a problem from a claim  
04:35 25 interpretation perspective, right?

04:35 1 A. I don't know if it would be a problem from a  
04:35 2 claim construction perspective because I'm not a patent  
04:35 3 attorney. But it seems to me that I have seen plenty  
04:35 4 of patents where, either logically or mathematically,  
04:35 5 concomitant relationships are present in more than one  
04:35 6 string of words.

04:35 7 MR. DEVLIN: Let's go back to the Court's  
04:35 8 claim construction, if we could. 26, I believe.

04:35 9 Actually, sorry. Go back to that slide,  
04:35 10 27, and just hold it.

04:35 11 BY MR. DEVLIN:

04:35 12 Q. Okay. What you have here in that item -- so  
04:35 13 we got a split image here. Your slide's on the  
04:36 14 right-hand side.

04:36 15 See it?

04:36 16 A. Yes, sir.

04:36 17 Q. Okay. And on the left-hand side of your slide  
04:36 18 is your summary of the claim language, right?

04:36 19 A. Yes, sir.

04:36 20 Q. Okay. And you're not saying that that Item 2  
04:36 21 is the Court's claim construction, correct?

04:36 22 A. I've already said that that is the case. Yes.

04:36 23 Q. Okay. And that's because it has extra words,  
04:36 24 one-to-one correspondence, among other things perhaps,  
04:36 25 right?

04:36 1 MR. JENSEN: Objection. Asked and  
04:36 2 answered.

04:36 3 THE COURT: Sustained.

04:36 4 BY MR. DEVLIN:

04:36 5 Q. Let's examine, while we're at it, the actual  
04:36 6 language of the --

04:36 7 MR. DEVLIN: We can take the '880 claim  
04:36 8 down, Mr. Gooden. Thank you.

04:36 9 BY MR. DEVLIN:

04:36 10 Q. Let's look -- and I know this is dense, but  
04:36 11 these issues matter, right? I mean, words matter.

04:36 12 So let's get on to this claim element, and  
04:37 13 let's look at -- what we're going to look at is what  
04:37 14 the one-to-one language in the '301 patent actually  
04:37 15 says.

04:37 16 It says that -- first of all, it doesn't say  
04:37 17 one-to-one. That phrasing isn't right in the claim  
04:37 18 itself, right? Doesn't say one-to-one like your dashed  
04:37 19 on the left-hand side?

04:37 20 A. It says: One said active link corresponding  
04:37 21 to each of the items selected.

04:37 22 I have a hard time not reading that as -- with  
04:37 23 the "one" in the first clause and the "each" in the  
04:37 24 second clause -- as anything other than a one-to-one  
04:37 25 correspondence.

04:37 1 Q. Okay. Let me get -- let me work through an  
04:37 2 example.

04:37 3 MR. DEVLIN: Let's go to the Forum  
04:37 4 website. Can we do that live? Thank you.  
04:37 5 BY MR. DEVLIN:

04:37 6 Q. And I think you did this.  
04:37 7 I want to try to understand what you said  
04:38 8 about the Forum website, and then we'll talk about it,  
04:38 9 okay?

04:38 10 And so what you said is if we click on  
04:38 11 Forums --

04:38 12 MR. DEVLIN: And just -- if you can  
04:38 13 follow along, Mr. Gooden. If we can click on Forums.  
04:38 14 Thanks.

04:38 15 BY MR. DEVLIN:

04:38 16 Q. And now we're going to go down and go to 8-Bit  
04:38 17 Microcontrollers. That's a selection. Is that what  
04:38 18 you're saying?

04:38 19 A. You're going to click on it --

04:38 20 Q. No. No. We're not going to -- sorry. We're  
04:38 21 going to -- we've hovered over it, and we've opened up  
04:38 22 a window to the right, right?

04:38 23 A. Right.

04:38 24 Q. And now let's go hover over to the right in  
04:38 25 the third one there.



04:38 1 Now, is that two selections?

04:38 2 A. Correct.

04:38 3 Q. Okay. And do one more. So now we're in the  
04:38 4 third level. And so that's three selections is what  
04:38 5 you're saying, right?

04:38 6 A. Yes, sir.

04:38 7 Q. Okay.

04:38 8 MR. DEVLIN: So click on that,  
04:38 9 Mr. Gooden.

04:38 10 BY MR. DEVLIN:

04:38 11 Q. So we did -- let's see. We did three  
04:38 12 selections?

04:38 13 A. Right.

04:38 14 Q. Okay. Three selections.

04:38 15 And your issue is that there's now in that,  
04:38 16 what we're calling the Active Path, what you'd say:  
04:38 17 No. No. That's got five links there and we only made  
04:39 18 three selections, right?

04:39 19 Is that what you're saying?

04:39 20 A. That is correct. Yes, sir.

04:39 21 Q. Okay. Now, it is true, though, that within  
04:39 22 those five things, one of those things corresponds to  
04:39 23 the first selection we made, right?

04:39 24 A. I'm afraid I don't understand what you're  
04:39 25 saying.

04:39 1 Q. Sure.

04:39 2 MR. DEVLIN: If you could touch on Forums  
04:39 3 again, Mr. Gooden.

04:39 4 Great. And scroll down to the third one  
04:39 5 down.

04:39 6 BY MR. DEVLIN:

04:39 7 Q. So the first selection was 8-Bit  
04:39 8 Microcontrollers.

04:39 9 Do you see that?

04:39 10 A. I do.

04:39 11 MR. DEVLIN: Now if you can just hover  
04:39 12 off that, Mr. Gooden. No clicking.

04:39 13 Thanks.

04:39 14 BY MR. DEVLIN:

04:39 15 Q. And you see there's an active link there that  
04:39 16 says 8-Bit Microcontrollers, right?

04:39 17 A. I do.

04:39 18 Q. So that active link corresponds to that  
04:39 19 selection. With me so far?

04:39 20 A. I am.

04:39 21 Q. Great.

04:39 22 MR. DEVLIN: Let's look at Forums again  
04:39 23 and go to this --

04:39 24 BY MR. DEVLIN:

04:40 25 Q. This is now the second selection we made,

04:40 1 Peripherals, Core Independent Peripherals.

04:40 2 Do you see that?

04:40 3 A. I do.

04:40 4 Q. Okay.

04:40 5 MR. DEVLIN: If you could hover off that.

04:40 6 BY MR. DEVLIN:

04:40 7 Q. In our active set of links here we have one  
04:40 8 that corresponds to that. Peripherals, Core  
04:40 9 Independent Peripherals.

04:40 10 Do you see that?

04:40 11 A. I do.

04:40 12 Q. Okay. And then we made a third selection,  
04:40 13 Timing and Measurements with some stuff.

04:40 14 MR. DEVLIN: And you can slide off that,  
04:40 15 Mr. Gooden.

04:40 16 BY MR. DEVLIN:

04:40 17 Q. And we have -- one of our active paths  
04:40 18 corresponds to that, right?

04:40 19 A. That's correct. Yes.

04:40 20 Q. Okay.

04:40 21 I want to read the claim language again  
04:40 22 specifically. It says: Dynamically constructing an  
04:40 23 Active Path as a sequence of active links as items are  
04:40 24 selected, using the graphical user menu system.

04:40 25 So far so good.

04:40 1 And then it says: With one said active link  
04:41 2 corresponding to each of the items selected.

04:41 3 Okay? So what we just looked at is we found  
04:41 4 one of the active links that corresponded to each of  
04:41 5 the three items selected, right?

04:41 6 A. That is correct. Yes.

04:41 7 Q. And then we have two extra things: A link  
04:41 8 that says All Forums and a link that says Home, right?

04:41 9 A. That is correct. Yes.

04:41 10 Q. What do those extra things remind you of in  
04:41 11 our table example?

04:41 12 A. The fifth leg.

04:41 13 Q. There you go. Exactly.

04:41 14 Thank you.

04:41 15 MR. DEVLIN: You can take that down,  
04:41 16 Mr. Gooden.

04:41 17 BY MR. DEVLIN:

04:42 18 Q. Let's go back to this issue of preambles.  
04:42 19 Remember we were talking about that earlier?

04:42 20 A. I do.

04:42 21 Q. Now, you know that in some cases a preamble  
04:42 22 can be -- we use the word "limiting" and sometimes it's  
04:42 23 not limiting; is that fair?

04:42 24 A. That's what the patent code says.

04:42 25 Q. Yeah. The rules of the game in the patent

04:42 1 world are sometimes the preamble counts and sometimes  
04:42 2 it doesn't count, right?

04:42 3 A. Yes, sir.

04:42 4 Q. And if it's not limiting, meaning it doesn't  
04:42 5 count, the -- I think the normal way of saying that is  
04:42 6 it just doesn't matter. It doesn't matter for  
04:42 7 infringement at all, whether it's there or not, right?  
04:42 8 That's what limiting means?

04:42 9 A. Yes, sir.

04:42 10 Q. Okay. So sometimes the preamble matters and  
04:42 11 it counts and you need to look at it for infringement,  
04:42 12 and sometimes you don't. Okay.

04:42 13 You said there's a presumption because  
04:42 14 Mr. Sherwood looked at evidence for it, therefore it's  
04:43 15 limiting, it counts.

04:43 16 That's what you said earlier? Did I  
04:43 17 understand you right, sir?

04:43 18 A. I think you did. And I think that's a  
04:43 19 reasonable assumption --

04:43 20 Q. Okay.

04:43 21 A. -- to make, based on what Mr. Sherwood did.

04:43 22 Q. What if the law is the opposite? That the  
04:43 23 default is the preamble's not limiting and that the  
04:43 24 Court can define it as limiting in certain  
04:43 25 circumstances, but that's not what happened here? What

04:43 1 if that were the situation?

04:43 2 A. If that were the situation, then it would be  
04:43 3 up to the attorneys to decide what to do about it,  
04:43 4 rather than a technical expert.

04:43 5 Q. Okay. But so the preamble wouldn't matter.  
04:43 6 That was the point.

04:43 7 A. I don't presume to pronounce on that. If you  
04:43 8 as a patent attorney tell me that's how it is, then  
04:43 9 I'll let you hash it out with Mr. Jensen.

04:44 10 Q. That's a good point. Let me try to ask it --  
04:44 11 the question differently. I do want to give you a fair  
04:44 12 question.

04:44 13 MR. JENSEN: Your Honor, this is getting  
04:44 14 into claim construction here. It has nothing to do  
04:44 15 with the, you know, operation of the products. If he  
04:44 16 wants to argue about whether the preamble is limiting  
04:44 17 or not, the time to have done that was claim  
04:44 18 construction.

04:44 19 THE COURT: Yeah. Mr. Devlin, so I think  
04:44 20 we've done all we -- you can on that issue.

04:44 21 MR. DEVLIN: Yeah. And, Your Honor, I  
04:44 22 just agreed that I asked him the wrong question. And I  
04:44 23 got an objection before my next question. So I just  
04:44 24 want to ask the next question which I think will be  
04:44 25 better. If I may, Your Honor.

04:44 1 Thank you.

04:44 2 BY MR. DEVLIN:

04:44 3 Q. So did you consider, in rendering your  
04:44 4 opinions, the situation where the preamble were not  
04:44 5 limiting? Is that something that you considered at all  
04:44 6 when you were rendering your opinions?

04:44 7 A. When I made the arguments, I was trying to  
04:44 8 cover all the bases. So the arguments I presented  
04:44 9 assumed that if it were limiting, it would count. And  
04:45 10 if it were not limiting, then it wouldn't.

04:45 11 Q. Okay. Thank you. Thank you very much. I  
04:45 12 appreciate that.

04:45 13 MR. DEVLIN: And thank you for the  
04:45 14 Court's indulgence.

04:45 15 Let's go to your Slide 43.

04:45 16 BY MR. DEVLIN:

04:45 17 Q. Now, here you're outlining your  
04:45 18 noninfringement arguments, right?

04:45 19 A. More or less. Yes.

04:45 20 Q. Okay. And let me say that more precisely.  
04:45 21 You're outlining the noninfringement arguments that  
04:45 22 you're going to present here in your testimony?

04:45 23 A. Yes.

04:45 24 Q. Okay. Thank you.

04:45 25 And you've got one argument for the old

04:45 1 website, sometimes called the original website, one for  
04:45 2 the Forum, and one for redesign?

04:45 3 A. Well, actually, the first argument is sort of  
04:45 4 an umbrella item and it relates to the preamble. But  
04:46 5 as you've already pointed out, that may not count.

04:46 6 Q. Great.

04:46 7 And that's what I was getting at. So that's  
04:46 8 not your decision and I get that. We'll figure that  
04:46 9 out later amongst ourselves. Thank you, sir. But  
04:46 10 that's what I was -- that's awesome. Thanks for -- I  
04:46 11 appreciate your help.

04:46 12 Okay. As to the other three, I just want to  
04:46 13 confirm that they're each unique to each of the  
04:46 14 websites. So the orange argument is only relevant to  
04:46 15 the old website, and the green argument is only  
04:46 16 relevant to the Forum website, and the blue argument is  
04:46 17 only relevant to the redesigned website. Did I  
04:46 18 understand your analysis correctly?

04:46 19 A. That is the correct analogy. And I will also  
04:46 20 add that the blue item is no longer a consideration.

04:46 21 Q. Okay. Great.

04:46 22 And, in fact, I'm only going to focus on the  
04:46 23 orange and the green.

04:46 24 A. Very good.

04:46 25 Q. So we got that going for us.



04:46 1 Now, the Forum, the text that you  
04:46 2 highlighted -- I'm going to deal with that one first,  
04:47 3 if that's okay.

04:47 4 The text that you highlighted was: With one  
04:47 5 said active link corresponding to each of the items  
04:47 6 selected...

04:47 7 And so forth.

04:47 8 Do you see that?

04:47 9 A. Yes, sir.

04:47 10 Q. Okay. And that gets to the one-to-one  
04:47 11 correspondence that we were just talking about,  
04:47 12 correct?

04:47 13 A. It does.

04:47 14 Q. And that's the issue we just dealt with, with  
04:47 15 the three links versus the five links, and the four  
04:47 16 legs and the one leg -- the fifth leg of the table.  
04:47 17 Remember that? So I'm not going to touch it again as  
04:47 18 long as we're in agreement that that's what we just  
04:47 19 dealt with.

04:47 20 A. It is, except for one thing. And when you  
04:47 21 create --

04:47 22 And if you would have your Mr. Gooden bring up  
04:47 23 the Forum site again, I'll show you what I'm talking  
04:47 24 about.

04:47 25 Q. Well, tell me what you're getting at and then

04:47 1 I'll --

04:47 2 A. If you click on the All Forums link, you do  
04:47 3 not get a cascading menu. You get a web page.

04:47 4 Q. I'm with you.

04:48 5 MR. DEVLIN: Let's go there and talk  
04:48 6 about it for a second.

04:48 7 BY MR. DEVLIN:

04:48 8 Q. All right. So let's do what we did before  
04:48 9 which was that we go to the Forums.

04:48 10 A. We've got a breadcrumb up. We can just click  
04:48 11 on the All Forums item in the breadcrumb.

04:48 12 Q. Well, I'd like to create it so we know where  
04:48 13 we're going and what we're doing. Is that okay?

04:48 14 A. It's your moment -- I mean your PC. You're  
04:48 15 driving.

04:48 16 Q. All righty.

04:48 17 MR. DEVLIN: Let's go down to the same  
04:48 18 thing we did. 8-Bit Microcontrollers, Peripherals,  
04:48 19 Core Peripherals, and then Timing and Measurements.

04:48 20 BY MR. DEVLIN:

04:48 21 Q. Okay. And now we see these five links again,  
04:48 22 right?

04:48 23 A. Yes, sir.

04:48 24 Q. Same as before. And we've established that  
04:48 25 each of those links corresponds to one of the three

04:48 1 selections we made.

04:48 2 There's three links in there -- there's two  
04:49 3 extra things, but three of those links correspond to  
04:49 4 the three selections we made, right?

04:49 5 A. That is correct. Yeah.

04:49 6 Q. And now the All Forums is extra, right?

04:49 7 A. In the figures in the patent, the starting  
04:49 8 element counts as part of the Active Path.

04:49 9 Q. I'm glad you said that, sir.

04:49 10 Are the figures of the patent what are  
04:49 11 infringed?

04:49 12 A. No. I'm just pointing out an example.

04:49 13 Q. Okay. But the patent's not limited to the  
04:49 14 examples of the figures, right?

04:49 15 A. Of course not.

04:49 16 Q. Thank you.

04:49 17 So let's get back to the claims.

04:49 18 Now, the All Forums here, I would agree with  
04:49 19 you, I have not pointed and -- or I didn't point to the  
04:49 20 All Forums link when I lined up the selections with the  
04:49 21 active links earlier, one and two and three. I didn't  
04:49 22 point to that. I agree with you, because I think it's  
04:50 23 extra.

04:50 24 Do you see what I mean?

04:50 25 A. I do see what you mean. But I think that at

04:50 1 least in terms of the figures, the patent teaches  
04:50 2 otherwise.

04:50 3 Q. Well, you know what, I might not disagree with  
04:50 4 you if we were analyzing the figures.

04:50 5 A. Okay.

04:50 6 Q. All right. But we're not, are we? We're  
04:50 7 analyzing the claims?

04:50 8 A. We're analyzing the entire patent. Yes.

04:50 9 Q. What are infringed are the claims?

04:50 10 A. Well, that's true. Yes.

04:50 11 Q. All right.

04:50 12 MR. DEVLIN: Let's go back to 43 for a  
04:50 13 second.

04:50 14 Thank you, Mr. Gooden.

04:50 15 BY MR. DEVLIN:

04:50 16 Q. Okay. That was the green and the Forums.  
04:50 17 Let's go into the orange.

04:50 18 The orange has those words "dynamically  
04:50 19 constructing an Active Path," right?

04:50 20 A. It does.

04:50 21 Q. Now, sometimes the claims say "automatically  
04:51 22 constructing," right?

04:51 23 A. I'd have to review the -- I can't remember if  
04:51 24 that's the -- I know there is an area where dynamically  
04:51 25 and automatically tend to serve interchangeable roles,

04:51 1 but I can't remember if this is the context in which  
04:51 2 that occurs.

04:51 3 If I may be allowed to review the  
04:51 4 patents-in-suit, I can verify that pretty quickly.

04:51 5 Q. Well, let me just see if I can find us an  
04:51 6 example on that.

04:51 7 A. Didn't Mr. -- did Mr. Sherwood, per chance, do  
04:51 8 a 1[b] analysis that would perhaps show us?

04:51 9 MR. DEVLIN: Let's go to the '411 patent.  
04:51 10 That's Joint Exhibit 1.

04:52 11 If we can go to Claim 1 there, and pull  
04:52 12 up -- yeah.

04:52 13 What I want to do, Mr. Gooden, is  
04:52 14 actually pull up from the start of Claim 1 to the  
04:52 15 bottom of that column.

04:52 16 And then if you could tack on the other  
04:52 17 language that continues onto the next column -- yeah --  
04:52 18 that finishes -- sorry. No. I mean, just the  
04:52 19 "automatically."

04:52 20 Thank you. There you go.

04:52 21 Thank you.

04:52 22 BY MR. DEVLIN:

04:52 23 Q. Can you see that, sir? Is that big enough for  
04:52 24 you?

04:52 25 A. I actually could read the other one, but this

04:52 1 is greater.

04:52 2 Q. Okay. Excellent.

04:52 3 So this is Claim 1 of the '411 patent also  
04:52 4 asserted. And you see where it says "automatically  
04:52 5 constructing"?

04:52 6 A. Yes, sir.

04:52 7 Q. Now, it's your understanding that the accused  
04:53 8 functionalities include automatically constructing an  
04:53 9 Active Path and everything that comes after that,  
04:53 10 right?

04:53 11 A. Wow. I'm sorry. I may be suffering from a  
04:53 12 momentary lapse, but I didn't really understand that  
04:53 13 question.

04:53 14 Would you mind asking me again?

04:53 15 Q. Sure.

04:53 16 There's a claim element here that begins with  
04:53 17 the words "automatically constructing."

04:53 18 Do you see that?

04:53 19 A. Yes. That would be in your parlance, Claim  
04:53 20 Element 1[b].

04:53 21 Q. Thanks.

04:53 22 And that claim element has other verbiage that  
04:53 23 goes down to -- right before the word "and" at the  
04:53 24 bottom of what's been pulled up.

04:53 25 Do you see that?

04:53 1 A. I do see it.

04:53 2 Q. And it's your understanding that the accused  
04:53 3 functionalities include automatically constructing an  
04:53 4 Active Path and everything that comes after that,  
04:53 5 right?

04:53 6 A. If you're asking me to agree that the accused  
04:54 7 functionality includes all of that capability, I have  
04:54 8 already testified that the old website lacks an Active  
04:54 9 Path for the reasons that I explained in my testimony.

04:54 10 So I can't agree with a statement that the  
04:54 11 accused functionality contains this, because I've  
04:54 12 already maintained explicitly otherwise.

04:54 13 Q. Okay. You were deposed in this case, right?

04:54 14 A. I was.

04:54 15 Q. And during your deposition you were  
04:54 16 represented by counsel, right, or counsel for Microchip  
04:54 17 was there defending it for you?

04:54 18 A. Yes. That's correct.

04:54 19 Q. And you swore an oath to tell the truth?

04:54 20 A. I did.

04:54 21 Q. And it was transcribed by a court reporter?

04:54 22 A. It was.

04:54 23 Q. Okay.

04:54 24 MR. DEVLIN: Can we see Mr. Tittel's  
04:55 25 February 10th transcript at 39, Lines 14 to 18?

04:55 1                   Actually, you can bring up 39, Lines 4  
04:55 2                   through 18, please.

04:55 3                   4 through 18. Thank you.

04:55 4           BY MR. DEVLIN:

04:55 5           Q.       All right. You see here the question starts  
04:55 6           talking out about the '411 patent.

04:55 7                   Do you see that?

04:55 8           A.       I do see that.

04:55 9           Q.       Okay. And then there's a question about the  
04:55 10           menu system, right? That's the first question and the  
04:55 11           first four lines.

04:55 12           A.       Are we looking at Page 39?

04:55 13           Q.       We're looking at Page 39.

04:55 14                   It says: So let me just talk about the '411  
04:55 15           patent --

04:55 16           A.       Oh, yeah. I'm just getting oriented. I do  
04:55 17           see what you're talking about. Yes, sir.

04:55 18           Q.       Okay. And then -- so -- and I'm focusing on  
04:56 19           the fact that there you're looking at the '411 patent,  
04:56 20           right?

04:56 21           A.       Yes, sir. That's correct.

04:56 22           Q.       Okay. And then the next question, which  
04:56 23           starts around --

04:56 24                   THE COURT: Counsel, you don't use the  
04:56 25           deposition to question him. Ask him a question. If



04:56 1 the answer's different, then we can talk about the  
04:56 2 deposition. Otherwise, it's irrelevant.

04:56 3 MR. DEVLIN: Thank you, Your Honor.

04:56 4 BY MR. DEVLIN:

04:56 5 Q. Question: Is it your understanding that the  
04:56 6 accused functionalities also include automatically  
04:56 7 constructing an Active Path and everything that comes  
04:56 8 after that?

04:56 9 There was an objection.

04:56 10 Witness says: Yes.

04:56 11 THE COURT: Counsel, you do not read the  
04:56 12 deposition. Ask him a question. If he gives a  
04:56 13 different answer here, then you tell the jury about the  
04:56 14 deposition.

04:56 15 Ask him a question and see how he answers  
04:56 16 here. It's hearsay until you do that.

04:56 17 MR. DEVLIN: Yes, Your Honor.

04:56 18 So I previously asked him right here: It  
04:56 19 is your understanding that the accused functionalities  
04:56 20 also include automatically constructing an Active Path  
04:57 21 and everything that comes after that in the claim?

04:57 22 He disagreed with that.

04:57 23 And I'm sorry I took so long with this  
04:57 24 impeachment evidence.

04:57 25 BY MR. DEVLIN:

04:57 1 Q. In your deposition, I'm going to just read  
04:57 2 from the deposition: Is it your understanding that the  
04:57 3 accused functionalities also include automatically  
04:57 4 constructing an Active Path and everything that comes  
04:57 5 after that?

04:57 6 Answer: Yes. It is.

04:57 7 Did I read that right, sir?

04:57 8 A. You did read it right. And I made a mistake  
04:57 9 in that testimony. I misunderstood at the time --

04:57 10 THE COURT: Mr. Tittel, you answered his  
04:57 11 question. If you want to explain it, your counsel will  
04:57 12 have an opportunity to let you do that.

04:57 13 THE WITNESS: Sorry, Your Honor. Yes.

04:57 14 BY MR. DEVLIN:

04:57 15 Q. Thank you.

04:57 16 MR. DEVLIN: And my apologies, Your  
04:57 17 Honor. I was taking too long.

04:57 18 BY MR. DEVLIN:

04:57 19 Q. Okay. So but now you disagree with it --  
04:57 20 we'll just -- you made a mistake in your deposition is  
04:57 21 your point and you're disagreeing with the presence of  
04:57 22 that element in the accused functionality, right?

04:57 23 A. That's what I testified earlier today.

04:57 24 Q. Okay. Fine.

04:57 25 MR. DEVLIN: Let's go to your 43 again.

04:58 1 Sorry.

04:58 2 There we are.

04:58 3 BY MR. DEVLIN:

04:58 4 Q. And we're talking about this dynamically  
04:58 5 constructing an Active Path.

04:58 6 MR. DEVLIN: And if we can go to 49, I  
04:58 7 think you expound on this a little bit.

04:58 8 BY MR. DEVLIN:

04:58 9 Q. All right. And what you were talking about is  
04:58 10 there's something called a static path and there's  
04:58 11 something called a dynamic path, right?

04:58 12 A. I was trying to explain the distinction  
04:58 13 between those two things.

04:58 14 Q. Let me make sure I understood you and then we  
04:58 15 can ask a few questions.

04:58 16 So as I understand it, the dynamic path is  
04:58 17 something where you're -- the web page or software's  
04:58 18 tracking the user's movements and it's constructing the  
04:58 19 Active Path in real time as it's following the user's  
04:58 20 movements through some menu or something.

04:58 21 Is that how I understood it?

04:58 22 A. No. It's not. It doesn't --

04:58 23 Q. Okay. Tell me what you mean.

04:58 24 A. It doesn't mean that -- you can only move on a  
04:59 25 breadcrumb trail when you transition from one web page

04:59 1 to another.

04:59 2 So it's not the navigating of the cascading  
04:59 3 menus that causes the additions to the links in the  
04:59 4 breadcrumb. It's the selection -- excuse me -- it's  
04:59 5 the selection of another web page as you're moving  
04:59 6 around in the website that causes a message to go back  
04:59 7 to the server, and for a response to come back with an  
04:59 8 updated breadcrumb string in it.

04:59 9 I'm not trying to say that the breadcrumb will  
04:59 10 change as the user navigates cascading menus on the  
04:59 11 client, because what the breadcrumb trail reflects is a  
04:59 12 trail of web pages. It's not a trail of mouse -- of  
04:59 13 menu navigation.

04:59 14 It's not until you click and make a selection  
05:00 15 that you're going to alter the breadcrumb trail, either  
05:00 16 to truncate it if you move up the trail when you make  
05:00 17 your selection or to add to it if you move down the  
05:00 18 trail when you make a selection.

05:00 19 Q. Okay. I definitely understood you. Let's use  
05:00 20 an example I think that'll help.

05:00 21 Let's go to Forum website, and I want to  
05:00 22 understand what's not dynamic about it, okay?

05:00 23 A. I didn't say Forum wasn't dynamic.

05:00 24 Q. Oh, I see. I'm sorry. I understand.

05:00 25 A. I thought we were talking about the old

05:00 1 website.

05:00 2 Q. My fault. The old website.

05:00 3 So let me ask you: If a user hovers over a

05:00 4 top nav --

05:00 5 A. Yes.

05:00 6 Q. -- and then they -- and the hover opens up a

05:00 7 list of items.

05:00 8 A. Correct.

05:00 9 Q. They hover over one underneath it, and that

05:00 10 opens another list, subordinate list.

05:00 11 You with me?

05:00 12 A. Yes.

05:00 13 Q. And then they go in that subordinate list and

05:00 14 they select.

05:00 15 A. Right.

05:00 16 Q. Okay. And then imagine then an Active Path is

05:01 17 created -- you go to a new web page with that selection

05:01 18 and an Active Path is created.

05:01 19 Do you see what I'm saying?

05:01 20 A. Yes. But between the clicking of the

05:01 21 selection and the appearance of the web page on the

05:01 22 client, what happens is you post back to the server.

05:01 23 And the information that you just selected is used to

05:01 24 create a return page that includes some form of

05:01 25 information to describe a breadcrumb.

05:01 1 In an infringing implementation, that would  
05:01 2 happen on a step-by-step basis to reflect every actual  
05:01 3 quick selection that the user had made.

05:01 4 And in the microchip.com old website, what I  
05:01 5 showed you was that there was a data block where all  
05:01 6 that information had been set up in advance and put in  
05:01 7 a database. And that's what was getting downloaded to  
05:02 8 the client when the page got sent back.

05:02 9 Q. So if I understand you -- and thank you for  
05:02 10 that clarification -- it's that what we're -- what I've  
05:02 11 been calling the Active Path in that example, that  
05:02 12 exact sequence of links is already preset and it's in  
05:02 13 the code?

05:02 14 A. No. I'm not saying that exact sequence of  
05:02 15 links is preset in the code. I'm saying that some  
05:02 16 sequence of links is already preset in the code. And  
05:02 17 as Ms. Mahar testified, and I confirmed through my own  
05:02 18 observations, sometimes it matches and sometimes it  
05:02 19 doesn't.

05:02 20 And the reason why --

05:02 21 THE COURT: Mr. Tittel, this is going to  
05:02 22 go a lot better for all of us if you would just answer  
05:02 23 Mr. Devlin's questions. If your lawyer wants to have  
05:02 24 you explain the answers, that's fine. But for right  
05:02 25 now, Mr. Devlin is asking you questions that can be

05:02 1 answered with a yes or no, relatively speaking, and I'd  
05:02 2 appreciate it if you would do that. And we can move  
05:02 3 on.

05:02 4 THE WITNESS: Very good, sir.

05:03 5 BY MR. DEVLIN:

05:03 6 Q. All right. So let me ask you this: I think I  
05:03 7 may have you now, and I hope I do. If, in the example  
05:03 8 I gave through that navigation by browsing and then the  
05:03 9 click, if everything -- and then if everything lined  
05:03 10 up, if the -- if the links that were in the path did  
05:03 11 line up with the selections made, would that count?  
05:03 12 Would that meet the claim of Active Path?

05:03 13 A. No, sir. It wouldn't. And the definition of  
05:03 14 Active Path is dynamically constructed. This -- the  
05:03 15 whole path for the resulting target page that goes back  
05:03 16 to the client is in a database.

05:03 17 So it has nothing to do with what the client  
05:03 18 just did. It's a path that's stored in toto elsewhere  
05:03 19 that's delivered when the page gets downloaded.

05:03 20 Q. That's what I thought I asked you earlier. So  
05:03 21 the path is already there somewhere stored in the  
05:04 22 database?

05:04 23 A. Yes, sir.

05:04 24 Q. Okay. And that's the issue?

05:04 25 A. Yes, sir.

05:04 1 Q. Okay. Thank you. All right.

05:04 2 Let's look at the '411 patent for a second.

05:04 3 MR. DEVLIN: And if we could go to  
05:04 4 Column 2, please, Mr. Gooden. And if we could pull up  
05:04 5 the paragraph that is on the right-hand column. And  
05:04 6 you can start at "Summary of the Invention" and go down  
05:04 7 to the paragraph that ends around Line 43.

05:04 8 Yeah. Great. Thanks.

05:04 9 And if you could highlight, on the  
05:04 10 right-hand side it says: An Active Path. About  
05:04 11 halfway down. Yeah. An Active Path.

05:04 12 BY MR. DEVLIN:

05:04 13 Q. So this is a summary of the invention section  
05:04 14 of the '411 patent. And this is part of the  
05:04 15 specification, the descriptive part, right, sir?

05:05 16 A. That's what it looks like. Yes, sir.

05:05 17 Q. Okay. And this is summarizing the invention.  
05:05 18 And it says here: An Active Path is dynamically  
05:05 19 constructed as a sequence of active links as items are  
05:05 20 selected using the graphical user menu system, with one  
05:05 21 active link corresponding to each of the items  
05:05 22 selected.

05:05 23 Is that the language that you were talking  
05:05 24 about? Or is that the idea you're getting at?

05:05 25 A. That is the idea that I'm getting at. But, of



05:05 1 course, I also included the Court's construction in my  
05:05 2 consideration.

05:05 3 Q. Understood.

05:05 4 MR. DEVLIN: Mr. Gooden, if we could keep  
05:05 5 that and scroll down. Right. And just -- perfect.

05:05 6 Thanks.

05:05 7 BY MR. DEVLIN:

05:05 8 Q. So the next paragraph says: According to a  
05:05 9 further aspect of the invention, predefined shortcuts  
05:05 10 are provided which enable direct access to a given menu  
05:05 11 item.

05:05 12 So we're talking about shortcuts there.

05:05 13 Do you see that?

05:05 14 A. I do.

05:05 15 Q. Okay. In this example it goes on: The Active  
05:06 16 Path is dynamically constructed when one of the  
05:06 17 predefined shortcuts are executed.

05:06 18 Do you see that?

05:06 19 A. I do.

05:06 20 Q. Now, a shortcut is just something the user can  
05:06 21 click on, right?

05:06 22 A. It could be a key sequence as well.

05:06 23 Q. Could be a key sequence. In other words, like  
05:06 24 a Control-F or whatever, right?

05:06 25 A. Absolutely.

05:06 1 Q. Okay. Well, it could be on the screen just  
05:06 2 something that you clicked on. Or key sequence. I'll  
05:06 3 take that too.

05:06 4 Neither of those has anything to do with any  
05:06 5 menu selection that a user would have made, right?

05:06 6 A. I still see in that same section of language,  
05:07 7 in the area just beyond what's highlighted, that it --  
05:07 8 that one active link corresponds to each of the menu  
05:07 9 items necessary to access the given menu item using the  
05:07 10 graphical menu system.

05:07 11 Q. We'll get there. What I'm talking about is  
05:07 12 what's highlighted now.

05:07 13 A. Okay.

05:07 14 Q. If an active link is created using a shortcut,  
05:07 15 using a key stroke, Control-S or whatever, then that  
05:07 16 active link would not be necessarily connected to  
05:07 17 anything that the user had done to navigate. It's a  
05:07 18 shortcut.

05:07 19 A. Yes. That's correct.

05:07 20 Q. Okay. And if it doesn't matter what the user  
05:07 21 did to get there, but the shortcut is going to pull up  
05:08 22 a given active link, then that given active link has to  
05:08 23 be stored somewhere, right? Or a set of active links,  
05:08 24 that has to be stored. For a shortcut to consistently  
05:08 25 pull up a given set of active links, they have to be

05:08 1 stored somewhere, right?

05:08 2 A. Yes. That's correct.

05:08 3 Q. Thank you.

05:08 4 I want to talk briefly without actually going  
05:08 5 to it for speed here. You talked -- you worked through  
05:09 6 that video that you and, I think, one of the folks at  
05:09 7 the law firm had created. And that's what we've been  
05:09 8 looking at, right?

05:09 9 A. Mr. Bonini. Yes.

05:09 10 Q. And part of the issue of that video is that's  
05:09 11 an example where the links that were in the Active Path  
05:09 12 did not line up with the selections made. Remember  
05:09 13 that?

05:09 14 A. I do.

05:09 15 Q. Okay. For that particular one.

05:09 16 And then we saw some other evidence, this DRL  
05:09 17 report that said that often happens. Remember that?

05:09 18 A. I do.

05:09 19 Q. And then Ms. Mahar said, yeah, that --  
05:09 20 sometimes we -- we got that wrong, but sometimes we got  
05:09 21 it right. Remember that?

05:09 22 A. I do.

05:09 23 Q. And you said that there are some paths that  
05:09 24 you could take through the menu system and get an  
05:09 25 active link and it would line up right here, right?

05:09 1 A. Yes. That would be because the contents of  
05:09 2 the database reflected the user's behavior.

05:09 3 Q. Okay. And I think you said it was -- you  
05:09 4 might have won the scratch-off when that happened.  
05:09 5 It's a pretty rare event or were you trying to --

05:09 6 A. I was just being whimsical. Sorry.

05:09 7 Q. Okay. No problem. I didn't know what you  
05:10 8 meant by that.

05:10 9 I think I recall that you actually did look at  
05:10 10 this a little bit. And you found -- and it was an  
05:10 11 estimate through some work you did on the Wayback  
05:10 12 Machine and, you know, investigating -- I would say  
05:10 13 playing around, but I don't mean that in a pejorative  
05:10 14 way. But working around on the website.

05:10 15 And you found that it might have been up to 25  
05:10 16 to 50 percent of paths that were created, using the  
05:10 17 hierarchical menu structure, didn't line up. Do you  
05:10 18 remember that?

05:10 19 A. I don't remember giving a specific number, but  
05:10 20 if you -- if that's what you have in my report, then I  
05:10 21 will -- I'll stand by my report.

05:10 22 Q. Okay. I have -- I have it elsewhere. And if  
05:10 23 you think that's a fair number, I'll live with it. If  
05:10 24 we can agree now that that sounds okay.

05:10 25 A. I would put that as a deliberately

05:10 1 conservative estimate because it's basically a wild  
05:10 2 guess.

05:10 3 Q. Okay. Fair enough.

05:10 4 But let's say it's 50 percent are wrong.  
05:11 5 How's that? So more than 25. At the top end,  
05:11 6 50 percent are wrong. You with me with that  
05:11 7 assumption?

05:11 8 A. You mean between 25 and 50.

05:11 9 Q. What I'm going to do is I'm going to take your  
05:11 10 highest number. Just assume that it's 50 percent of  
05:11 11 them are -- end up not aligned. They're incorrect.  
05:11 12 They don't match up.

05:11 13 A. I don't know that I can agree with that  
05:11 14 because I just don't have the data.

05:11 15 Q. Fair enough. And for efficiency, I'm going to  
05:11 16 step past that.

05:11 17 But we agree that there are some paths that  
05:11 18 one can follow on the website where it would align?

05:11 19 A. At the time that we're talking about, which I  
05:11 20 believe would be when Mr. Sherwood was making his  
05:11 21 analysis in December and I was doing the follow-up in  
05:11 22 January?

05:11 23 Q. Right.

05:11 24 A. Is that correct?

05:11 25 Q. Okay. Exactly.

05:11 1 A. Yes, sir.

05:11 2 Q. And before that too, whenever this original  
05:11 3 website of the main -- the main website, that's what  
05:11 4 we're talking about, right?

05:11 5 A. Well, I would suggest actually looking at the  
05:12 6 burndown chart that was prepared and tracking the curve  
05:12 7 on the burndown chart to see if it might shed any light  
05:12 8 on it. Because the people running the project would be  
05:12 9 the ones most likely to make a better educated guess  
05:12 10 than I did.

05:12 11 Q. I'm going to move us along and just go back  
05:12 12 and start from the point where we agree there are some  
05:12 13 of the paths that one would take through the  
05:12 14 hierarchical structure. And they would create active  
05:12 15 links where things would line up. Some of those  
05:12 16 existed, right?

05:12 17 A. Agreed.

05:12 18 Q. Okay. And we're dealing with comprising  
05:12 19 claims, right?

05:12 20 A. Yes, sir.

05:12 21 Q. Okay. And so if I can follow a menu structure  
05:12 22 and I can get an Active Path where they do align, that  
05:12 23 instance is infringement, assuming all the other  
05:12 24 elements are met, right?

05:12 25 A. I don't agree. Because I have shown that the

05:12 1 items in the breadcrumb come from a database and do not  
05:12 2 track user activity.

05:13 3 Q. Okay. We just talked about that database  
05:13 4 issue, I think. So I'm going to set that aside, okay?

05:13 5 What I'm talking about is this particular  
05:13 6 instance, you're saying that "also" means that  
05:13 7 something's not infringing, and that's where they don't  
05:13 8 line up.

05:13 9 Are you with me now?

05:13 10 I just want to talk about that issue in  
05:13 11 isolation.

05:13 12 Are you with me?

05:13 13 A. I think my arguments cover all comers. And  
05:13 14 that they speak to both the trails that match and the  
05:13 15 trails that don't match.

05:13 16 Q. I get that you think that, but that's not your  
05:13 17 or my choice. That's the jury's choice. And if they  
05:13 18 think that that one argument's wrong about the database  
05:13 19 and how things are stored, then another way they could  
05:13 20 find something not infringing is if they don't line up,  
05:13 21 right?

05:13 22 A. If they don't line up, it's clear that the  
05:14 23 path the user took is not the path that's reflected in  
05:14 24 the breadcrumb.

05:14 25 Q. Okay. But that issue doesn't exist when they

05:14 1 do line up. That's all I'm saying, right?

05:14 2 A. No problem. I agree.

05:14 3 Q. All righty. Thank you.

05:14 4 You were on the Forum section and you looked  
05:14 5 at -- there were the two other tabs at the top like the  
05:14 6 Page Extras and the Posts.

05:14 7 You with me?

05:14 8 A. Yes, sir.

05:14 9 Q. Okay. If there's infringement otherwise by  
05:14 10 the Forum section, not including those things, because  
05:14 11 these are comprising claims, what those things do don't  
05:14 12 matter, right?

05:14 13 A. I would submit that that was a legal decision  
05:14 14 to be made by the attorneys. If their lack of  
05:14 15 infringement doesn't have a bearing, then it doesn't  
05:15 16 have a bearing.

05:15 17 Q. That's my point. If the fact that those  
05:15 18 things don't infringe doesn't matter, then they don't  
05:15 19 matter. You agree with that?

05:15 20 Great.

05:15 21 Wait. I didn't actually hear you say "yes" on  
05:15 22 the record. You do agree with that, right?

05:15 23 A. Yes. I was trying to say the same thing. I'm  
05:15 24 sorry.

05:15 25 Q. All righty. Thank you.



05:15 1 Did you ever look into investigating any  
05:15 2 feedback that the redesigned website got from users?

05:15 3 Did you take anything like that into account  
05:15 4 in your analysis or opinions in this case?

05:15 5 A. No, sir. I did not.

05:15 6 Q. Okay. Just so we're clear -- and I know you  
05:16 7 might not think this means that much, but I just want  
05:16 8 to make sure we're all clear where things of facts  
05:16 9 are -- the patents that are the subject of the [REDACTED]  
05:16 10 license, they don't have an Active Path as these  
05:16 11 patents talk about it, right?

05:16 12 A. When I said the technologies were  
05:16 13 comparable -- okay. Let me answer your question.

05:16 14 Q. Exactly. Yeah. I'm just trying to get at  
05:16 15 that fact.

05:16 16 They don't have an Active Path?

05:16 17 A. No.

05:16 18 Q. No. You agree with me that they don't have an  
05:16 19 Active Path?

05:16 20 A. Correct.

05:16 21 Q. We're in agreement. Okay. Thank you.

05:16 22 Sorry for the double negative there.

05:16 23 Talking about the benefits and the sort of the  
05:16 24 timing of sales going up and so forth, we heard that,  
05:16 25 when we moved from the original website to the

05:16 1 redesigned website, right?

05:16 2 A. Yes, sir.

05:16 3 Q. Okay. That move solved a lot of preexisting  
05:17 4 problems that we heard about, code instability, slow  
05:17 5 loads, et cetera, right?

05:17 6 A. That's -- so Ms. Mahar testified. Yes.

05:17 7 Q. All right. Thank you.

05:17 8 You mentioned something about external  
05:17 9 referrals from search pages to the microchip.com  
05:17 10 website, right?

05:17 11 A. Yes, sir.

05:17 12 Q. Some of those might bring someone to  
05:17 13 particular pages within the site, correct? Some of  
05:17 14 those referrals?

05:17 15 A. I think that would probably be the majority.

05:17 16 Q. And then some would bring you just to the  
05:17 17 basic microchip.com site, right?

05:17 18 A. Yes.

05:17 19 Q. Okay.

05:17 20 MR. DEVLIN: May I have just a moment,  
05:17 21 Your Honor, to confer with my team?

05:17 22 Thank you.

05:18 23 All right. One more item.

05:18 24 May I approach, Your Honor?

05:18 25 Thank you.

05:18 1 BY MR. DEVLIN:

05:18 2 Q. I just wanted to confirm one thing.

05:18 3 What I'm handing you, sir, that's the  
05:18 4 infringement -- Mr. Sherwood's infringement reports,  
05:18 5 okay?

05:18 6 A. Yes, sir.

05:18 7 Q. All right. I'm going to --

05:18 8 A. If I don't need it any more, you can take it  
05:18 9 away.

05:18 10 Q. I wanted to get back to my microphone here.  
05:18 11 So -- I'm sorry. I'm looking for something.

05:18 12 MR. DEVLIN: May I approach again, Your  
05:18 13 Honor? I apologize.

05:18 14 Thank you, sir.

05:18 15 A. Did I turn to the correct page?

05:18 16 BY MR. DEVLIN:

05:18 17 Q. You did, sir.

05:19 18 MR. JENSEN: Mr. Devlin, what report is  
05:19 19 that, the --

05:19 20 MR. DEVLIN: The infringement report of  
05:19 21 Mr. Sherwood.

05:19 22 MR. JENSEN: Okay. Do you have a copy of  
05:19 23 that?

05:19 24 MR. DEVLIN: I don't. I just have one  
05:19 25 for the witness.

05:19 1 BY MR. DEVLIN:

05:19 2 Q. Okay. You're looking at Page 65 of  
05:19 3 Mr. Sherwood's report.

05:19 4 Do you see that?

05:19 5 A. It's the right-hand page of the two-page, but  
05:19 6 I see. Yes.

05:19 7 Q. Great. Thanks.

05:19 8 And that is talking about some of the pages  
05:19 9 that he looked at right at the time he was issuing his  
05:19 10 report that -- and this was sort of November/December  
05:19 11 of last fall, right?

05:19 12 A. Yes, sir. That's correct.

05:19 13 Q. And he's looking at some of the pages that  
05:19 14 still had the old -- or original website structure, not  
05:20 15 the redesigned website structure, right?

05:20 16 A. Yes. That's correct.

05:20 17 Q. And then he bullets some right there, some  
05:20 18 examples?

05:20 19 A. Right. There's a list at the end of Paragraph  
05:20 20 149.

05:20 21 Q. Yeah. Could you read the second example into  
05:20 22 the record?

05:20 23 A. [www.microchip.com/development-tools](http://www.microchip.com/development-tools).

05:20 24 Q. Great. Thanks. Great.

05:20 25 MR. DEVLIN: Your Honor, pass the

05:20 1 witness. Thank you.

05:20 2 THE COURT: Counsel?

05:20 3 REDIRECT EXAMINATION

05:20 4 BY MR. JENSEN:

05:20 5 Q. Mr. Tittel, do you recall being asked some  
05:21 6 questions about this concept of a "predefined  
05:21 7 shortcut"?

05:21 8 A. I do.

05:21 9 Q. And there was a suggestion by Mr. Devlin that  
05:21 10 if you use a predefined shortcut, there was no need to  
05:21 11 create an Active Path?

05:21 12 A. I don't believe he actually said that, but I  
05:21 13 did gather that understanding from what he did say.

05:21 14 MR. JENSEN: Let's take a look, if we  
05:21 15 could, Mr. Thompson, at -- you can pull up the '411  
05:21 16 patent, Claim 2.

05:21 17 Okay. And it's not on my monitor for  
05:21 18 some reason, but I can see it over here. And let's  
05:21 19 zoom out a little bit and start with Claim 1.

05:21 20 BY MR. JENSEN:

05:21 21 Q. And Claim 1 of the '411 patent is an  
05:21 22 independent claim; is that correct, Mr. Tittel?

05:21 23 A. It is.

05:21 24 Q. Okay. And Claim 2 is a dependent claim?

05:22 25 A. Yes. I believe it depends on Claim 1.

05:22 1 Q. Okay. And what does that mean in terms of an  
05:22 2 infringement analysis if a claim is a dependent claim?

05:22 3 A. If the parent claim on which the dependent  
05:22 4 claim depends is found not to infringe, then the  
05:22 5 dependent claim cannot infringe.

05:22 6 Q. And is that because the dependent claim can  
05:22 7 only add additional requirements to an independent  
05:22 8 claim?

05:22 9 A. Yes.

05:22 10 Q. And if we look at Claim 2 here, and I believe  
05:22 11 there's a typo in the patent itself, but Claim 2 says  
05:22 12 it's a method for navigating according to Claim 1,  
05:22 13 correct?

05:22 14 A. It does.

05:22 15 Q. And then it says "providing," and I believe  
05:22 16 that should say, "predefined shortcuts"?

05:22 17 A. Yes, sir.

05:22 18 Q. Does the additional requirement of Claim 2, to  
05:22 19 provide a predefined shortcut, mean that it was not  
05:23 20 necessary in Claim 1 to first automatically construct  
05:23 21 an Active Path as a sequence of hierarchical active  
05:23 22 links as items are selected?

05:23 23 A. Yes, sir. Purely from a logical perspective,  
05:23 24 when I was asked the question, I was thinking, but you  
05:23 25 still have to create the path in the first place.

05:23 1 Q. So the discussion you had with Mr. Devlin  
05:23 2 about predefined shortcuts has no bearing whatsoever on  
05:23 3 your noninfringement opinions in this case?

05:23 4 A. That's correct.

05:23 5 Q. And for completeness, let's look at two other  
05:23 6 claims. And I believe these are the only two other  
05:23 7 claims that require a predefined shortcut.

05:23 8 MR. JENSEN: That would be the '301  
05:23 9 patent, Claim 2, Mr. Thompson.

05:23 10 BY MR. JENSEN:

05:24 11 Q. And is Claim 2 an independent (sic) claim that  
05:24 12 depends from Claim 1?

05:24 13 A. It is.

05:24 14 Q. Okay. And Claim 2 is the claim that requires  
05:24 15 providing a -- again, an error in the patent, but  
05:24 16 providing a predefined shortcut?

05:24 17 A. It is.

05:24 18 Q. Okay.

05:24 19 MR. JENSEN: And last but not least,  
05:24 20 let's go to the '836 patent, Claim 2.

05:24 21 BY MR. JENSEN:

05:24 22 Q. And it looks like they fixed the misspelling  
05:24 23 by this point in the patent prosecution.

05:24 24 But, again, is Claim 2 a dependent claim that  
05:24 25 depends on Claim 1?

05:24 1 A. It is.

05:24 2 Q. Okay. And there's nothing in Claim 1 of any  
05:24 3 of the asserted patents that requires or does not  
05:25 4 require -- well, strike that.

05:25 5 Let me ask the question this way: Are there  
05:25 6 any independent claims that are asserted in this case  
05:25 7 that would allow for infringement of the independent  
05:25 8 claim simply by having a predefined shortcut without  
05:25 9 automatically constructing an active -- or dynamically  
05:25 10 constructing an Active Path?

05:25 11 A. No, sir.

05:25 12 Q. Okay.

05:25 13 MR. JENSEN: You can take that down,  
05:25 14 Mr. Thompson.

05:25 15 BY MR. JENSEN:

05:25 16 Q. I believe there was a question about something  
05:25 17 you had said in your deposition that you wanted to  
05:25 18 clarify.

05:25 19 Before I give you an opportunity to do that,  
05:25 20 let me just ask: How many times were you deposed in  
05:25 21 this litigation?

05:25 22 A. Twice.

05:25 23 Q. Twice.

05:25 24 For approximately how long?

05:25 25 A. I think it was seven hours over a 10-hour



05:25 1 period the first day and seven hours over a 11-hour  
05:25 2 period in the second day.

05:25 3 Q. And it was an attorney for Caddo that was  
05:26 4 asking you questions during those two days?

05:26 5 A. Yes. That's correct.

05:26 6 Q. And it looked like I was distracted at the  
05:26 7 time the question was being asked by Mr. Devlin. But  
05:26 8 it sounded like there may have been a misstatement or a  
05:26 9 mistake at one point in your --

05:26 10 A. I totally mis --

05:26 11 Q. -- at one point in that 14 hours of  
05:26 12 deposition?

05:26 13 A. Yes. I totally misunderstood what was going  
05:26 14 on. And if you look at your comment in the record, it  
05:26 15 speaks directly to that.

05:26 16 Q. Was there any further clarification you wanted  
05:26 17 to make? Or you've done it. You said you made a  
05:26 18 mistake at some point, and --

05:26 19 A. I thought he was talking about the patent.  
05:26 20 And he was talking about the Microchip systems. I did  
05:26 21 miss the boat.

05:26 22 Q. Okay. And that was because it sounds like you  
05:26 23 may have misunderstood the question?

05:26 24 A. I did.

05:26 25 Q. Okay. So Mr. Devlin showed you the Forum

05:26 1 website a few minutes ago. And you did some exercises  
05:27 2 and navigated the menu structure there and looked at  
05:27 3 the resulting path.

05:27 4 Do you recall that?

05:27 5 A. I do.

05:27 6 Q. And there were a number of questions about the  
05:27 7 correspondence between the resulting items in the menu  
05:27 8 path and the route that was selected?

05:27 9 A. Yes. That's correct.

05:27 10 Q. And as part of that discussion, he was trying  
05:27 11 to get at this idea of a one-to-one correspondence and  
05:27 12 whether or not that impacted your noninfringement  
05:27 13 analyses?

05:27 14 A. Yes.

05:27 15 Q. And I believe his suggestion was that because  
05:27 16 these claims are comprising claims, that if there were  
05:27 17 extra links at the beginning such as the Home link or  
05:27 18 the Forums link, that somehow that didn't matter or  
05:27 19 those don't count?

05:27 20 A. That is what he said.

05:27 21 Q. Okay. And do you recall, one way or the  
05:27 22 other, whether when Mr. Sherwood was testifying --  
05:27 23 putting aside anything Mr. Devlin said -- but when  
05:27 24 Mr. Sherwood was testifying, did he point to the Home  
05:28 25 link and all of the links in that path on the Forum

05:28 1 site and the old Microchip site and identify those as  
05:28 2 the Active Path?

05:28 3 A. Would you repeat the question?

05:28 4 Q. Yeah.

05:28 5 MR. JENSEN: Let's pull up the Forum site  
05:28 6 and we can do this by way of example and we'll try to  
05:28 7 get through this as quickly as we can.

05:28 8 So let's go to the Forums there at the  
05:28 9 top. And we'll just pick a -- we'll pick a path.  
05:28 10 Let's go to Microprocessors.

05:28 11 THE COURT: Counsel, we're going to take  
05:28 12 a very short break. And then we'll finish with  
05:28 13 Mr. Tittel.

05:28 14 MR. JENSEN: Very good.

05:28 15 THE BAILIFF: All rise.

05:29 16 (Jury exited the courtroom.)

05:29 17 THE COURT: Thank you. You may be  
05:29 18 seated.

05:29 19 A juror needed a break.

05:29 20 MR. JENSEN: Understood.

05:29 21 This is probably five minutes or less.  
05:29 22 We're real close.

05:29 23 THE COURT: Mr. Devlin?

05:29 24 MR. DEVLIN: I've just -- so far I'm just  
05:29 25 going to address one point quickly and I'll be done.

05:29 1 Thank you, Your Honor.

05:29 2 THE COURT: As soon as -- if y'all will  
05:29 3 just wait here, as soon as the jury's ready to come  
05:29 4 back in, we'll bring them back in.

05:29 5 Mr. Tittel, you can step down.

05:29 6 (Recess taken.)

05:35 7 THE BAILIFF: All rise.

05:35 8 THE COURT: Please remain standing for  
05:35 9 the jury.

05:35 10 (Jury entered the courtroom.)

05:35 11 THE COURT: Thank you. You may be  
05:35 12 seated.

05:35 13 Counsel?

05:35 14 MR. JENSEN: Mr. Thompson, could you  
05:35 15 bring the Forum site back up? All right.

05:35 16 And we were just going to make a  
05:35 17 selection here and do an example. We went to  
05:36 18 Microprocessors and General MPU Topics.

05:36 19 And is there a way to turn this on? I  
05:36 20 wanted to highlight something. Maybe Mr. Thompson can  
05:36 21 help me here.

05:36 22 BY MR. JENSEN:

05:36 23 Q. So in the resulting page that loaded,  
05:36 24 Mr. Tittel, do you see the path, Home, All Forums,  
05:36 25 Microprocessors, General MPU Topics?

05:36 1 A. I do.

05:36 2 Q. Okay. And how many links are in that path?

05:36 3 A. Four.

05:36 4 Q. Okay. And when Mr. Sherwood was testifying,  
05:36 5 did he identify that entire path as being the Active  
05:36 6 Path where each one of those links would be an active  
05:36 7 link?

05:36 8 A. Yes.

05:36 9 Q. Okay. So when Mr. Sherwood was testifying, he  
05:36 10 defined Active Path as the entire sequence of links.  
05:36 11 He didn't pick and choose which ones counted and which  
05:36 12 ones didn't, did he?

05:36 13 A. Not that I noticed. No.

05:37 14 Q. Okay. And, in fact --

05:37 15 MR. JENSEN: You can take that down,  
05:37 16 Mr. Thompson. And I'd like for you to bring up the  
05:37 17 Demonstrative No. 135 from Mr. Sherwood's presentation.  
05:37 18 BY MR. JENSEN:

05:37 19 Q. And was there a suggestion or was it your  
05:37 20 understanding, Mr. Tittel, that there was a suggestion  
05:37 21 by Mr. Devlin that somehow the Home link just doesn't  
05:37 22 matter. It doesn't count. It's extra because these  
05:37 23 are comprising claims?

05:37 24 A. That was my understanding. Yes.

05:37 25 Q. Okay. And what we're looking at here is a

05:37 1 demonstrative from Mr. Sherwood that, I believe, was  
05:37 2 annotated by him or his lawyers and used in his  
05:37 3 examination and testimony here.

05:37 4 Do you recall seeing this slide?

05:37 5 A. Yes. I do.

05:37 6 Q. And if we look down at the bottom there, do  
05:38 7 you see those numbers, 1, 2, and 3?

05:38 8 A. I do.

05:38 9 Q. Okay. And is it your understanding that those  
05:38 10 are the annotations that were added by Mr. Sherwood?  
05:38 11 Or were those on the website originally?

05:38 12 A. No. They would pretty much have to be  
05:38 13 annotations.

05:38 14 Q. Okay. And in this instance, did Mr. Sherwood  
05:38 15 identify the Home link as being part of the Active  
05:38 16 Path?

05:38 17 A. It sure looks like it to me. Yes.

05:38 18 Q. Okay.

05:38 19 MR. JENSEN: No further questions.

05:38 20 MR. DEVLIN: No questions, Your Honor.  
05:38 21 Thank you.

05:38 22 THE COURT: Could I have counsel up here  
05:38 23 for just a second?

05:38 24 (Bench conference.)

05:38 25 THE COURT: I think I know the answer to

05:38 1 this, but I didn't want to -- he's done, right?

05:38 2 MR. JENSEN: Yes.

05:38 3 THE COURT: Okay. So I can dismiss him.

05:38 4 MR. JENSEN: Uh-huh.

05:38 5 THE COURT: So okay. That's all. I  
05:39 6 didn't want to ask in front of the jury.

05:39 7 (Bench conference concludes.)

05:39 8 THE COURT: Thank you, Mr. Tittel. You  
05:39 9 may be excused.

05:39 10 By that, you are free to leave, but  
05:39 11 you're also welcome to stay and watch the rest of the  
05:39 12 trial. I'm not asking you to leave, but you're not  
05:39 13 bound by the Court's rules.

05:39 14 Ladies and gentlemen of the jury, we're  
05:39 15 done for the afternoon. And so remembering my  
05:39 16 instructions not to discuss the case amongst  
05:39 17 yourselves, if you'd be so kind as to be here by  
05:39 18 8:30 -- or I'm sorry. 8:45 tomorrow. We will start at  
05:39 19 9 o'clock.

05:39 20 THE BAILIFF: All rise.

05:39 21 (Jury exited the courtroom.)

05:39 22 THE COURT: Thank you. You may be  
05:40 23 seated.

05:40 24 So for the defendant, we have what left?

05:40 25 MR. JENSEN: I believe we have a

05:40 1 deposition clip to play. We've got one fact witness,  
05:40 2 Dr. Wolf. And then our damages expert.

05:40 3 THE COURT: Okay. And so generally  
05:40 4 speaking, but I'll -- y'all are trying the case. I  
05:40 5 will seriously invite you to tell me your thoughts.

05:40 6 What I would suggest we do is finish the  
05:40 7 case. And then whenever it finishes -- we'll know more  
05:40 8 in the morning. Let's -- whenever we finish with the  
05:40 9 evidence, then we'll take up the jury charge. I'll let  
05:40 10 the jury go for whatever period of time it takes.

05:40 11 Generally speaking, if it's too late in  
05:40 12 the afternoon before I finish with the charge, the  
05:40 13 charge will take me about an hour to read. So if it's  
05:41 14 too late in the afternoon for me, meaning 4:00 or  
05:41 15 later, I have you all do the closing arguments when the  
05:41 16 jury's fresh the next day. And so that's probably what  
05:41 17 we'll plan on doing.

05:41 18 If we finish dramatically early tomorrow  
05:41 19 with the damages and everything else, and we can get  
05:41 20 the -- and the charge conference goes quickly and all  
05:41 21 that, and we can get done.

05:41 22 But for right now, I think the best laid  
05:41 23 plans, unless you all have some objection to it, would  
05:41 24 be to get it -- whatever we need to get done tomorrow,  
05:41 25 including me reading the charge. Whenever I finish



05:41 1 with that, we can give the jury off the rest of the  
05:41 2 day, and then you all can do the closing arguments  
05:41 3 Friday morning. If that works for you all.

05:41 4 MR. DEVLIN: Certainly works for  
05:41 5 plaintiff, Your Honor.

05:41 6 MR. JENSEN: I believe that's fine with  
05:41 7 us as well.

05:41 8 THE COURT: I'm inviting -- if -- it's  
05:41 9 you all's trial. If you think there's --

05:41 10 MR. JENSEN: Yeah. I think we should  
05:41 11 look at how long is our deposition clip. I don't  
05:42 12 recall. I'd like to check in. And given everything  
05:42 13 that's happened, how long --

05:42 14 THE COURT: Well, I'd like y'all to leave  
05:42 15 tonight knowing whether you're going to have to do the  
05:42 16 closing argument tomorrow or not. I mean, I don't want  
05:42 17 you all --

05:42 18 MR. JENSEN: May we have like one minute  
05:42 19 just to confer amongst ourselves? I think we can  
05:42 20 resolve this.

05:42 21 THE COURT: Sure.

05:42 22 MR. JENSEN: Yeah. I think Friday  
05:42 23 morning's going to be best.

05:42 24 THE COURT: I think so too.

05:42 25 Okay. Is there anything we need to take

05:42 1 up?

05:42 2 MR. DEVLIN: Nothing for plaintiff, Your  
05:42 3 Honor. Thank you.

05:42 4 MR. JENSEN: Nothing for defendant.

05:42 5 THE COURT: Okay.

05:42 6 Now, let's talk about the charge  
05:42 7 conference. Have you all submitted your proposed  
05:42 8 charges? I should know that, but I don't.

05:42 9 MR. DEVLIN: Yes. There's been a  
05:42 10 submission and, you know -- there's submissions.

05:42 11 THE COURT: Okay. So what I would  
05:42 12 recommend you do is, if you think you've done all you  
05:42 13 can to bridge the gap, that's fine.

05:42 14 If you haven't, occasionally people will  
05:43 15 keep working and they'll get more stuff done.

05:43 16 The way I do my charge conference is the  
05:43 17 only people that need to be here for the charge  
05:43 18 conference are the attorneys who are directly involved  
05:43 19 in -- everyone's welcome, but I always hated it when I  
05:43 20 had nothing to do with the charge and I had to sit  
05:43 21 there and waste time. There's other stuff -- there's  
05:43 22 other stuff you all can be doing.

05:43 23 So whoever wants to stay for the charge  
05:43 24 conference can stay. You're not required to. The  
05:43 25 charge conference is off the record. And then we -- I

05:43 1 tell you what we're going to do. And then once you  
05:43 2 all -- I will tell you exactly what I'm going to do.

05:43 3 I'll give you a chance to put on the  
05:43 4 record anything you're unhappy about, either that I've  
05:43 5 put in you didn't want, I didn't put in that you did  
05:43 6 want, whatever that is. That will be on the record,  
05:43 7 but the charge conference -- there will be -- it will  
05:43 8 be informal. I mean, you don't have to wear coats and  
05:44 9 ties and all of that. It will probably be in here.

05:44 10 So I'm just trying to think if there's  
05:44 11 anything else.

05:44 12 Now, I've done, I think, 13 or 14 patent  
05:44 13 jury trials now. Almost for sure the winning argument  
05:44 14 from someone will be: This is the way you've done it  
05:44 15 before.

05:44 16 And if someone wants something different,  
05:44 17 the burden will be on them to say why the case is  
05:44 18 unique, and I would -- if you want me to do something  
05:44 19 that is different from every other thing I've done.

05:44 20 And also remember this. The charge is  
05:44 21 unbelievably long. Regardless, it takes me an hour to  
05:44 22 read. So, again, the tie will always go to me reading  
05:44 23 less. If you all are trying to persuade me: No, I  
05:44 24 really -- I really -- you really need to add more  
05:44 25 language, that's rarely successful.

05:44 1 But it's not that I don't have an open  
05:45 2 mind. It's just, you know, we've done this a bunch now  
05:45 3 and I think we've got the charge in pretty good shape.

05:45 4 So having said all that, if you all will  
05:45 5 be here tomorrow morning by 8:30 if you have issues; by  
05:45 6 9:00 if you don't, we'll finish up with the deposition,  
05:45 7 the fact witness, the damages expert, you all will both  
05:45 8 rest.

05:45 9 We will give the jury a break of whatever  
05:45 10 time we think we need to get the charge done. We'll  
05:45 11 have the jury come back. I'll charge them. They'll  
05:45 12 have the rest of the day off, and we'll do closing  
05:45 13 arguments at 9:00 on Friday morning.

05:45 14 I will be able to stay in Waco until  
05:45 15 about 1:00 or 2:00 on Friday. If the verdict comes in  
05:45 16 after that, one of the magistrate judges will be able  
05:45 17 to take the verdict and read it.

05:45 18 And so there'll be someone here to cover  
05:45 19 for my absence if it's just receiving a verdict.

05:45 20 Anything else we need to take up?

05:45 21 MR. JENSEN: Just one question about  
05:45 22 closings, Your Honor. You gave us some guidance at the  
05:46 23 start of the trial with respect to the length of the  
05:46 24 openings. I think it would be helpful for us to have a  
05:46 25 sense of kind of the rules of the road, as it were, for

05:46 1 closings.

05:46 2 THE COURT: You have 30 minutes.

05:46 3 MR. JENSEN: Okay. Since we did not put  
05:46 4 on an invalidity defense, does that mean that the  
05:46 5 plaintiff does not get a rebuttal closing argument?

05:46 6 THE COURT: No. The plaintiff has the  
05:46 7 burden, they are going to get to close. I mean, the  
05:46 8 plaintiff has the burden, so they get to open and  
05:46 9 close.

05:46 10 MR. JENSEN: And does that count against  
05:46 11 the 30 minutes?

05:46 12 THE COURT: They've got 30 minutes.

05:46 13 Now, what I don't want -- no one's ever  
05:46 14 done this, you know, I don't want a 3-minute opening  
05:46 15 and a 27-minute closing. It needs to be a full -- I'm  
05:46 16 not going to -- you know, there's no 13-minute mark.  
05:46 17 I'm just -- I want a full opening and then you'll get a  
05:46 18 full closing.

05:46 19 And for what it's worth, it may be worth  
05:46 20 nothing, I know how I felt when I was practicing, how  
05:47 21 important I thought closings were. I have now  
05:47 22 interviewed 36 juries and asked them the question every  
05:47 23 time: What difference did the closing argument make?

05:47 24 And I've had 100 percent of the time,  
05:47 25 100 percent of the jurors say it made no difference at

05:47 1 all and we could have skipped it.

05:47 2 So when you all are sitting there  
05:47 3 thinking: Oh, but we need more than 30 minutes. We  
05:47 4 can't do it in 30 minutes.

05:47 5 My -- the reason I put you at 30 minutes  
05:47 6 is my general sense is that that hour is an hour that  
05:47 7 you have seven impatient people who would really rather  
05:47 8 just be going back to the jury room and deliberating.

05:47 9 Now, this might be the exception. We'll  
05:47 10 see. You all might be so. I know both -- I'm assuming  
05:47 11 you two are doing the closing arguments. You all might  
05:47 12 be the first time the jurors break into tears and say  
05:47 13 that persuaded me and I was going to do something  
05:47 14 different.

05:47 15 But that's my experience from 36 trials,  
05:48 16 is the closing arguments have not been very persuasive.

05:48 17 That's for what it's worth. Again,  
05:48 18 that's for what it's worth.

05:48 19 Kristie reminded me, if the plaintiff --  
05:48 20 I'm sorry -- if the defendant wants to make -- they did  
05:48 21 not make their motion for -- I postponed the motion for  
05:48 22 directed verdict when the plaintiffs closed.

05:48 23 If you all want to put that on the record  
05:48 24 at this time or tomorrow morning, either one, that will  
05:48 25 be fine.

05:48 1 MR. JENSEN: I think we'd prefer to do it  
05:48 2 tomorrow morning, if that's all right, Your Honor?  
05:48 3 First thing.

05:48 4 THE COURT: If Mr. Devlin's fine with it,  
05:48 5 and he hasn't complained so far.

05:48 6 MR. DEVLIN: No objections. Thank you.

05:48 7 THE COURT: Okay. Y'all have a good  
05:48 8 evening.

05:48 9 THE BAILIFF: All rise.

05:48 10 (Hearing adjourned.)

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1 UNITED STATES DISTRICT COURT )  
2 WESTERN DISTRICT OF TEXAS )  
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